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A DIGEST OF STATE AIR POLLUTION LAWS, 1966 EDITION

Public Health Service
Washington, D. C.

1966

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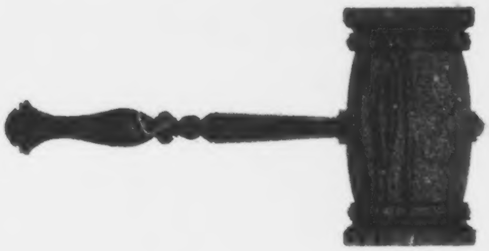

A DIGEST OF
STATE AIR POLLUTION LAWS
1966 EDITION

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U.S. DEPARTMENT OF HEALTH, EDUCATION, & WELFARE
PUBLIC HEALTH SERVICE
DIVISION OF AIR POLLUTION
WASHINGTON, D. C., 20201

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APPENDIX 275

STATE AIR POLLUTION CONTROL LEGISLATION

	CONTROL	LOCAL OPTION	RESEARCH & TECHNICAL ASSISTANCE	OTHER^2
Alabama				
Alaska	X			
Arizona		X	X	
Arkansas	X			
California		X	X	X
Colorado	X	X		X^1
Connecticut			X	
Delaware	X			
District of Columbia	X^1			
Florida	X	X^1		X
Georgia			X	X
Hawaii	X	X		
Idaho	X	X		X
Illinois	X	X		
Indiana	X	X		X
Iowa		X^1		
Kansas				
Kentucky	X	X		
Louisiana	X			
Maine				X
Maryland	X	X		
Massachusetts	X	X^1		X
Michigan	X	X		X
Minnesota	X^1			
Mississippi				
Missouri	X	X		
Montana				X
Nebraska		X^1		
Nevad.		X		
New Hampshire				X
New Jersey	X	X		X
New Mexico				X
New York	X	X		X
North Carolina		X^1	X	
North Dakota				
Ohio		X^1	X	X
Oklahoma			X	
Oregon	X	X		
Pennsylvania	X	X		
Rhode Island	X			
South Carolina	X	X		X
South Dakota				
Tennessee			X	
Texas	X	X		
Utah		X		
Vermont				
Virginia	X	X		
Washington		X	X	
West Virginia	X	X^1		
Wisconsin		X		X
Wyoming				
Guam				
Puerto Rico				
Virgin Islands				

1/ Limited coverage
2/ Does not include authority to abate nuisances

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Alabama [1]

"§ 75. The following things, conditions and acts, among others are declared to be public nuisance per se, menacing public health and unlawful:

"(5) Such . . . acts, things or conditions as may from time to time be by the rules and regulations of the State board of health declared to be public nuisances per se menacing public health.

"(6) The ownership, possession, management, control, maintenance, permitting or use of any of the things or conditions described or referred to . . . in any rule or regulation adopted under subdivision 5 of this section.

"(7) The conducting of a business, trade, industry, or occupation, or the doing of a thing, not inherently unsanitary or a menace to public health in such a manner as to make it a menace or likely to become a menace to public health.

"§ 76. Any such nuisance shall be abated by the county board of health . . ."

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[1] Citations in this digest refer to Code of Alabama, Recompiled 1958, Title 22.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Alaska [1]

1. Air Pollution Control

ENABLING AUTHORITY: While there is no specific reference to atmospheric pollution in the enumeration of powers of the Board of Health, power to regulate atmospheric pollution is derived from ACLA § 40-1-6 (b) (c), as amended, Chapter 56, Laws 1951, § 1, p. 150:

> The Board is empowered, directed and authorized to adopt, promulgate, repeal and amend rules and regulations not inconsistent with existing law, relating to and providing for: . . . (c) regulation of sanitation and sanitary practices in the interest of public health . . .

AIR POLLUTION CODE: The following provisions were adopted effective on or before July 28, 1959 (effective date of Alaska Administrative Procedure Act) pursuant to the enabling authority.

I. GENERAL STATEMENT [2]

A. PURPOSE

The policy of the State of Alaska is to maintain reasonable standards of atmospheric purity consistent with the protection of human, animal or plant life and property and to require the use of all known available and reasonable methods to control air pollution in the State (§601).

B. DEFINITION

"Atmospheric pollution includes, but is not limited to emission of smoke, particulate matter, soot, cinders, ashes, toxic and radioactive substances, fumes, vapors, gases, industrial odors and dusts which constitute a nuisance, a danger to public health, or impair the public comfort and convenience" (§ 600 (b)).

II. ADMINISTRATIVE ORGANIZATION

A. COMMISSIONER OF HEALTH AND WELFARE

The Commissioner of Health and Welfare administers the air pollution control program. He is empowered to "enlist the aid of and cooperate with representatives of local, State and federal governmental agencies and units charged with matters relating to atmospheric pollution," and of "representatives of private industry which may be affected" (§ 601 (a) and (b); § 601 (d)).

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[1] Citations in this digest refer to Alaska Compiled Laws Annotated 1949.
[2] Citations refer to "Alaska Air Pollution Code."

B. POWERS OF THE COMMISSIONER

The Commissioner has jurisdiction to abate and prevent atmospheric pollution, including power:

1. To hold public hearings on 60 days notice, compel attendance of witnesses, "make findings of fact and determinations" and assess penalties for violations of these regulations and the Health and Safety Code (§ 601 (c) (1));
2. After public hearing, to adopt and make public allowable air quality standards, based on the criteria of the public health, safety, and welfare (§ 601 (c) (2));
3. After public hearing to make, modify, or alter orders requiring the discontinuance of pollution practices in excess of the established standards, specifying time for and conditions of compliance (§ 601 (c) (3));
4. To conduct investigations, and to "enter at all reasonable times in or upon any property . . . for the purpose of inspecting and investigating conditions relating to atmospheric pollution" (§ 601 (c) (7) and § 601 (f));
5. To institute legal proceedings in court to compel compliance with the regulations or the Commissioner's determinations and orders (§ 601 (c) (4));
6. To bring proceedings in the name of the State to abate the production of air pollution which causes such injury to human, plant or animal life as to constitute a public nuisance. If the person complained against does not choose to comply, he is entitled to a hearing before the Commissioner, after which the Commissioner may enter an order, which becomes final unless appeal to the courts is made within twenty days (§ 601 (g) and (h));
7. To settle or compromise any action or cause of action for the recovery of a penalty under these regulations (§ 601 (c) (8));
8. After public hearing, to require, issue, continue in effect, or deny permits for the prevention or abatement of atmospheric

pollution or the installation or operation of equipment to prevent atmospheric pollution (§ 601 (c) (5));

9. To revoke or modify any permit issued if, after public hearing, he deems revocation or modification necessary to control atmospheric pollution (§ 601 (c) (6));

10. To require submission of plans for atmospheric pollution control by any industrial establishment, community, or public or private property subdivision or development (§ 601 (c) (10));

11. To represent Alaska for the receipt of moneys for the purpose of air pollution control studies or research, and to expend the same, after appropriation therefor (§ 601 (c) (9));

12. To prepare guides or other material to help develop a comprehensive program of atmospheric pollution control; and

13. To perform such other acts as may be necessary to carry out his responsibilities in preventing air pollution (§ 601 (c) (11)).

C. PENALTY

Violation of the regulations is a misdemeanor, punishable by fine of up to $500 or imprisonment up to one year, each day the violation continues constituting a separate offense (§ 601 (i)).

2. Radiation

In 1959, the Department of Fish and Game of Alaska was directed to initiate and pursue continuing studies, particularly with respect to, inter alia, the protection of airspace from pollution, as to the need for changes in the laws and regulations administered by it that would arise from the presence within the State of special nuclear, by-product, and radioactive materials, from the operation in Alaska of production or utilization facilities, and from the generation of radiation, and, on the basis of such studies, to make such recommendations for the enactment of laws or amendments to law administered by it, and such proposals for amendments to the regulations issued by it as may appear necessary and appropriate (§40-2B-4 (7)).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Arizona [1]

1. Air Pollution Control

General Statement: In 1962, the Arizona Legislature amended Title 36, ch. 6 of the Arizona Revised Statutes by adding a new article 8 entitled "Air Pollution". This amendment authorized county boards of supervisors to adopt air pollution control regulations and to establish air pollution control districts. The State department of health was also authorized to make studies of air pollution at the request and expense of a county (Ch. 121, Laws 1962).

Air pollution is defined as: "the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in such quantities and of such duration as are or may tend to be injurious to human, plant or animal life, or property" (§ 36-771).

I. STATE ASSISTANCE

The department of health may make studies of the nature, extent, distribution and sources of air pollution and possible control thereof within any county so requesting and at the expense of such county. In carrying out such studies, the department is authorized to enter into cooperative agreements with public and private agencies, educational institutions and county and municipal governments (§ 36-772).

II. COUNTY PROGRAMS

A. AIR POLLUTION STUDY-BOARD OF SUPERVISORS

A county board of supervisors may, within its territorial limits:

1. Investigate the causes, source, extent and degree of air pollution, including studies of devices to reduce air pollution from motor vehicles;

2. Adopt rules and regulations to abate or prevent air pollution "in all its forms, including smoke, vapors, dust, wind-borne matter, fumes, radioactive materials" originating within the county;

3. Designate an existing county department, or establish an air pollution control district, to carry out investigations and

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[1] Citations refer to Arizona Revised Statutes Annotated.

inspections and to enforce rules and regulations (§ 36-773);

4. Establish an air pollution control district (§ 36-774.5).

B. COUNTY HEALTH DEPARTMENT

The county board of supervisors may authorize the county health agency, in cooperation with the state department of health, to study the county air pollution problem and its possible effects on adjoining counties, cooperate with public or private agencies and all other interested persons, and at its discretion, hold public hearings (§ 36-774).

C. POWERS AND DUTIES OF AIR POLLUTION CONTROL DISTRICT

A district is granted perpetual succession, and it may sue and be sued in its name, adopt a seal, take, hold, and use land, and dispose of real or personal property within or without the district as may be necessary for carrying out its purposes (§ 36-775).

III. ACCEPTANCE OF FUNDS OR GRANTS

The State department of health, county health departments, or boards of supervisors may accept and expend funds granted for air pollution research by Federal, State or private agencies, or political subdivisions of the State.

IV. EFFECTIVE DATE

These provisions became effective March 27, 1962.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Arkansas [1]

Air Pollution Control Act

I. GENERAL STATEMENT

Act 183, Laws 1965, changed the name of the Water Pollution Control Commission to the "Arkansas Pollution Control Commission" and gave the Commission new powers to control air pollution. The Commission is empowered to adopt rules and regulations, hold hearings, enter orders, represent the state in negotiations for interstate compacts, and institute court proceedings to compel compliance with the Act and Commission rules, regulations, and orders. Causing air pollution, violating the conditions of a permit, or violating a Commission rule, regulation, or order is a misdemeanor.

The Act is the exclusive means within the state for the control of air pollution.

II. DEFINITIONS

A. "Air contaminant" means any solid, liquid, gas, or vapor or any combination thereof. (Part 2, Sec. 3(1)).

B. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristics and of duration which are materially injurious or can be reasonably expected to become materially injurious to human, plant or animal life or to property or which unreasonably interfere with enjoyment of life or use of property, throughout the state or throughout such area of the state as shall be affected thereby. (Part 2, Sec. 3(2)).

C. "Air contamination" means the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution. (Part 2, Sec. 3(3)).

D. "Air contamination source" means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property in, at, or on which such source is located, or the facility, equipment or other property by which the emission is caused or from which the emission comes. (Part 2, Sec. 3(4)).

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[1] Citations preceded by "47-" refer to Arkansas Statutes. Other citations are to Act 183, Laws 1965.

III. ARKANSAS POLLUTION CONTROL COMMISSION

A. Composition and Organization (Sec. 47-803(a) as amended by Sec. 2)

The Commission consists of 8 members, one designated from and by each of the following: State Board of Health, Game and Fish Commission, Soil and Water Conservation Commission, and State Forestry Commission; and three appointed by the Governor representing industry, municipalities, and agricultural and livestock interests. The three members initially appointed serve 2, 4, and 6 year terms; successors are appointed for a 6 year term.

State Agency members receive expenses but no additional salary. Appointed members receive $25 per day and expenses while carrying out Commission duties.

A Chairman and Vice-Chairman are elected annually by the Commission from its membership.

B. Powers and Duties

The Commission shall have the power or duty:

1. To require to be submitted and to approve plans and specifications for disposal systems or any part thereof and to inspect their construction for compliance with the approved plans. (Sec. 47-804(7)).
2. In any hearing or investigation, a Commission member or employee or agent authorized by the Commission may administer oaths, examine witnesses and issue subpoenas. (Sec. 47-804(11)(2)). Such subpoenas may be enforced by the Circuit Courts. (Sec. 47-804(11)(3)).
3. To develop and effectuate a comprehensive program for the prevention and control of all sources of pollution of the air of the State. (Part 2, Sec. 5(a)).
4. To advise, consult and cooperate with other agencies of the State, political subdivisions, industries, other states, the Federal government and with affected groups in furtherance of the purposes of this Act. (Part 2, Sec. 5(b)).
5. To encourage and conduct studies, investigations and research relating to air pollution and its causes, prevention, control, and abatement, as it may deem advisable and necessary, and, after notice and a public hearing, establish reasonable air purity standards for areas of the State consistent with the intent of this Act. (Part 2, Sec. 5(c)).

6. To collect and disseminate information relative to air pollution, its prevention and control. (Part 2, Sec. 5(d)).

7. To consider complaints, make investigations and hold hearings. (Part 2, Sec. 5(e)).

8. To encourage voluntary cooperation by the people, municipalities, counties, industries and others in preserving and restoring the purity of air within the State. (Part 2, Sec. 5(f)).

9. To administer and enforce all laws and regulations relating to pollution of the air. (Part 2, Sec. 5(g)).

10. To represent the State in any and all matters pertaining to plans, procedures, or negotiations for interstate compacts in relation to air pollution control. (Part 2, Sec. 5(h)).

11. To cooperate with and receive moneys from the Federal government or any other source for the study and control of air pollution, and the Commission is designated as the official State air pollution control agency for such purposes. (Part 2, Sec. 5(i)).

12. To adopt rules requiring a permit for the construction or operation of any equipment which will cause the emission of air contaminants, and to revoke, modify, or deny such permits. Permits shall issue, upon application, to all equipment in operation at the time the rule takes effect and may be revoked only upon notice and hearing. (Part 2, Sec. 5(j)).

13. To make, issue, modify, revoke, and enforce orders prohibiting, controlling or abating air pollution, and requiring the adoption of remedial measures to prevent, control or abate air pollution. (Part 2, Sec. 5(k)).

14. To formulate and promulgate, amend, repeal and enforce rules and regulations implementing or effectuating the powers and duties of the Commission under this Act to control air pollution. (Part 2, Sec. 5(l)).

15. To adopt, after notice and public hearing, reasonable and nondiscriminatory rules and regulations requiring the registration of and the filing of reports by persons engaged in operations which may result in air pollution. (Part 2, Sec. 5(m)).

16. To institute court proceedings to compel compliance with the provisions of this Act and rules, regulations, and orders issued pursuant thereto. (Part 2, Sec. 5(n)).

17. To exercise all of the powers in the control of air pollution as are granted to the Commission for the control of water pollution under Part 1 of this Act. (Part 2, Sec. 5(o)).

18. To enter upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations. (Sec. 47-805(3)).

C. Jurisdictional Limitation

1. The provisions of this Act do not apply to: agricultural operations and equipment; residential barbecue equipment or outdoor fireplaces; land clearing and grading operations; road construction operations and the use of protable equipment therein; incinerators and heating equipment in residences used by 4 or fewer families; fires set with official sanction for weed abatement, elimination of a fire hazard, or instruction in fire fighting or civil defense. (Part 2, Sec. 4).

2. Nothing contained in the Act shall be construed to amend or repeal Arkansas Statutes, secs. 82-1512 et seq., concerning radiation control, or to grant the Commission jurisdiction with respect to air conditions solely within any plant, works, or shop or with respect to employer-employee relationships. (Part 2, Sec. 13).

IV. DIRECTOR

The Commission is directed to appoint a Director to handle correspondence, make and arrange inspections and investigations, and prepare reports and data as directed by the Commission. He is the executive officer and active administrator of all air pollution control activities and has other duties as directed and authorized by the Commission. (Sec. 47-803(b)).

V. TECHNICAL SECRETARY

The Chief Sanitary Engineer of the State Board of Health shall serve as Technical Secretary of the Commission and shall advise and cooperate with the Commission and staff in technical and scientific matters. He receives no additional compensation, and attends Commission meetings but has no vote. (Sec. 47-803(c)).

VI. PROCEDURE

A. Hearings

1. Upon Commission determination that there are reasonable grounds to believe that there has been a violation of the Act or Commission order, rule, or regulation it may give written notice to the alleged violator specifying the causes of complaint. The notice shall require correction of the matters complained of or that the violator appear and answer the charges before the Commission on no less than 10 days notice. (Sec. 47-806(1)(a)).

2. Hearings may be conducted by the Commission or its authorized officer, member, or agent. (Sec. 47-806(1)(b)).

3. Upon a Commission finding of an emergency an order may be issued without a hearing to be effective immediately. (Sec. 47-806(1)(c)).

4. Any person who is denied a permit or who has a permit revoked or modified may have a hearing, if requested within 30 days. (Sec. 47-806(1)(d)).

5. No order of general application shall be issued without a public hearing. Any person affected shall be given notice and heard. (Sec. 47-806(1)(e)).

B. Variances

The Commission may grant variances from any rule, regulation, or order, upon conditions deemed necessary to protect the public health and welfare, if it finds that strict compliance is in appropriate because of conditions beyond the control of the applicant, or because compliance would be unreasonable, unduly burdensome, or impractical or would cause substantial curtailment or closing down of the operation, or because no alternative facility or method of handling is available. Variances may be limited in time.

Variances may be revoked after a public hearing held on 10 days notice. (Part 2, Sec. 9).

C. Confidential Information

Any information relating to secret processes, devices, or methods of manufacture or production obtained by the Commission or its employees shall be kept confidential. Any violation of this section shall constitute a misdemeanor. (Part 2, Sec. 7).

VII. FEES

No fees shall be charged by the Commission for permits or for the performance of any of its functions under this Act. (Part 2, Sec. 5(j)).

VIII. JUDICIAL REVIEW

A. Appeal may be taken to the County Circuit court from any final order, rule, regulation or other final determination of the Commission by any person adversely affected. (Sec. 47-806(3)).

B. The appeal shall be heard according to the rules governing civil actions, so far as applicable. The court may take additional evidence on any issue, or may try any or all issues de novo, but no jury trial shall be had. (Sec. 47-806(7)).

C. In any appeal or other proceeding involving any order, rule, regulation, or other Commission decision, the action of the Commission shall be prima facie evidence. (Sec. 47-806(9)).

IX. PENALTIES (Part 2, Sec. 8)

It shall constitute a misdemeanor: knowingly to cause air pollution; to fail to obtain a permit required by Commission regulation, to violate the conditions of a permit, or to operate after a permit has been suspended or revoked; or to violate any Commission rule, regulation, or order.

Liabilities shall not apply to accidental violations caused by Act of God, war, strike, riot, or other catastrophe, or accidental breakdown of equipment, if promptly repaired.

X. SCOPE AND CONSTRUCTION

A. If any part of this Act is held invalid or unconstitutional, it shall not affect the validity of the rest of the Act. (Part 2, Sec. 11).

B. This Act pre-empts the field of control and abatement of air pollution and contamination and no political subdivision of the State shall enact laws in this field. Nothing in the Act shall be construed to prevent private actions under existing laws. (Part 2, Sec. 13).

C. Persons other than the State or Commission shall not acquire actionable right by virtue of this Act. The basis for proceedings that result from violation of any Commission standard, rule, or regulation inures solely to the benefit of the people of the State. It is not intended to create new rights or to enlarge or abrogate existing rights. Commission determinations do not create any presumption or finding for the benefit of any person other than the State. (Part 2, Sec. 14).

D. All laws and parts of laws in conflict with this Act are repealed. (Part 2, Sec. 14).

XI. EFFECTIVE DATE

Approved March 10, 1965.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

California [1]

1. State Department of Public Health

Article 9, Chapter 2, Part 1, Division of the Health and Safety Code gives the State Department of Public Health certain duties with respect to air pollution. They include research, establishment of standards, monitoring air pollution, and assistance to local agencies.

A. RESEARCH

The Department is required to:

1. Conduct studies to determine health effects of air pollution.
2. Determine physiological effects of air pollution on plant and animal life.
3. Determine factors responsible for air pollution.
4. Monitor the concentration of pollutants in the air.
5. Develop administrative procedures for control of air pollution in emergencies.
6. Assist local agencies in air pollution activities.

The Department of Public Health may enter into agreements with any public or private organization, agencies or individual as may be deemed necessary to carry out its functions.

B. THE STATE DEPARTMENT OF PUBLIC HEALTH WAS DIRECTED, PRIOR TO FEBRUARY 1, 1960, TO:

1. Develop and publish standards of quality for the air of the State. The standards shall "reflect the relationship between the intensity and composition of air pollution and the health, illness, including irritation to the senses, and death of human beings, as well as damage to vegetation and interference with visibility" (§ 426.1, Health and Safety Code).
2. Determine the maximum allowable standards of emission of

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[1] Citations refer to West's Annotated California Codes, Health and Safety Code and 1965 Commulative Pocket Part. Deering's California Codes Annotated contains parallel citations.

exhaust contaminants from motor vehicles "compatible with the preservation of the public health including the prevention of irritation to the senses, interference with visibility and damage to vegetation" (§ 426.5, Health and Safety Code).

Both standards shall be developed after holding hearings with public notice and opportunity for interested persons to be heard. The department, after notice and hearing, may revise both standards from time to time. In revising motor vehicle exhaust contaminant standards after February 1, 1960, the department shall take into account all emission from motor vehicles rather than exhaust emissions only.

Whenever the department revises the standards, it shall submit a copy of such revised standards to the Legislature if the Legislature is in session, or to the Senate Fact Finding Committee on Transportation and Public Utilities and the Assembly Interim Committee on Transportation and Commerce if the Legislature is not in session, and such revised standards shall not become effective until the 31st day after such submission. (§ 426.5, amended by section 1, ch. 2031, Laws 1965, p. 1769, S.B. 317, approved July 17, 1965.)

3. The State Department of Public Health shall by February 1, 1967, define and publish criteria concerning the levels, duration and frequency of occurrence of contaminants in the atmosphere, including those contaminants emitted from motor vehicles, which, if occurring in the atmosphere of any area in the state, will pose a substantial threat to the public health, including irritation to the senses, or will interfere with visibility or damage vegetation.

   The criteria shall be developed after public hearings have been held and an opportunity for all interested persons to appear, to file statements and be heard has been given. The department shall publish such notice of the hearings as it determines to be reasonably necessary.

   The department after notice and hearing way revise the criteria, and shall publish the revised criteria, from time to time (§ 426.3 added by sec. 1, ch. 140, Laws 1966).

C. MOTOR VEHICLE POLLUTION CONTROL [1]

I. GENERAL STATEMENT

The Legislature, having found that the emission of pollutants from motor vehicles is a major contribution to air pollution in many parts of California, that their control and elimination is important for protection of public health, prevention of irritation to the senses, interference with visibility, and damage to vegetation and property, and that the Department of Public Health had established standards pursuant to §§ 426.1 and 426.5 (see above), enacted a motor vehicle pollution control law to establish uniform procedures for compliance with these standards. The law establishes a Motor Vehicle Pollution Control Board to pass upon motor vehicle pollution control devices (§§ 24378,24383,24386,24389, et seq.).

II. ADMINISTRATIVE ORGANIZATION

A. MOTOR VEHICLE POLLUTION CONTROL BOARD

A Motor Vehicle Pollution Control Board, responsible directly to the Governor, is established in the State Department of Public Health, which provides the Board with administrative services. It is composed of 13 members who serve without compensation, nine appointed on four year staggered terms by the Governor with the consent of Senate, the other four being the Directors of Public Health, Agriculture, Motor Vehicles, and the Commissioner of the California Highway Patrol. Appointments are made so as to secure representation for interested groups including agriculture, labor, organizations of motor vehicle users, the motor vehicle industry, science, air pollution control officials, and the general public. The Board annually selects its chairman and vice-chairman from the Governor's appointees (§§ 24383, 24384, 24385).

B. POWERS AND DUTIES

1. To adopt rules and regulations in accordance with the Administrative Procedures Act.

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[1] This law, Chapter 3 (commencing at Section 24378) of Division 20, Health and Safety Code was added by Ch. 2031, Laws 1965, p. 1769, S.B. 317, approved July 17, 1965. Citations are to the Health and Safety Code, as amended.

California--Continued

2. To employ necessary technical and other personnel.

3. To determine and publish criteria for approval of motor vehicle pollution control devices, taking into consideration cost of the device and its installation, its durability, the ease of determining whether when installed it is properly functioning, and other factors which render it suitable for control of motor vehicle air pollution or for public health, safety and welfare.

4. To issue certificates of approval for laboratory tested devices complying with standards issued in accordance with § 426.5 and criteria adopted under II. B. 1, 3, above. No certificate of approval shall be issued for any device if

    a. The cost of such device, including installation is more than sixty-five dollars ($65.);

    b. The annual maintenance cost of the device, including any adjustment necessary for its proper operation in order to meet the standards set pursuant to § 426.5, is likely to exceed fifteen dollars ($15) a year; or

    c. The device does not equal or exceed the performance criteria established by the Motor Vehicle Pollution Control Board for devices for new motor vehicles or, in the alternative, have an expected useful life of 50,000 miles of operation (§ 24386 as amended by sec. 1.2, Ch. 2031, Laws 1965; sec 1, Ch. 111, Laws 1966).

5. To exempt from compliance vehicles for which certified devices are not available, or which meet State standards without additional equipment, and certain other categories of vehicles (§ 24386, as amended by Ch. 999, Laws 1963, approved June 19, 1963).

6. To revoke, suspend or restrict a certificate of approval or an exemption, upon determination that the device or motor vehicle no longer operates within standards set under § 426.5 or adopted under II. B. 1, 3 above or should no longer be exempted. However, such revocation does not render violative a vehicle previously equipped with a formerly certified device or prohibit parts replacement unless the revocation is based on

a finding that the certified device is unsafe in actual use or is otherwise mechanically defective, in which case 30 days are allowed for bringing the vehicle into compliance with the regulations (§ 24386, as amended by Ch. 999, Laws 1963, approved June 19, 1963).

7. To issue permits for the testing of expermental motor pollution control devices installed in motor vehicles. (§ 24386.1, added by sec. 1.3, Ch. 2031, Laws 1965, p. 1769, S.B. 317, approved July 17, 1965).

8. Any manufacturer of a device requried by subdivision (d) of § 24390 shall, as a condition to certification of the device by the board, agree that so long as one such device is certified by the board the manufacturer shall either: (1) agree to enter into such cross licensing or other agreements as the board determines are necessary to insure adequate competition among manufacturers of such devices to protect the public interest; or (2) agree as a condition to such certification that if only one such device from one manufacturer is made available for sale to the public, the board shall, taking into consideration the cost of manufacturing the device and the manufacturer's suggested retail price, and in order to protect the public interest, determine the fair and reasonable retail price of such device and may require, as a condition to continued certification of such device, that the retail price of such device, including installation, not exceed such price as determined by the board. In either event the retail price so determined by the board for a device required by subdivision (d) of § 24390 may be less than, but shall not be more than, sixty-five dollars ($65) per vehicle (§ 24386.2 added by sec. 2, Ch. 111, Laws 1966).

9. To adopt regulations specifying procedures for submission of motor vehicle pollution control devices for testing and certification (§ 24387).

10. To notify the Department of Motor Vehicles when two or more devices for the control of emissions of pollutants from a particular source, for which standards have been set by the state department under § 426.5, have been approved (§ 24388, as amended by Ch. 999, Laws 1963, approved June 19, 1963). This establishes the certification date for such devices. There is a separate certification date each time such standards are set and notification given (§ 24389, as

amended by Ch. 999, Laws 1963, approved June 19, 1963).

11. All meetings of the Board shall be public and open to attendance by all persons (§ 24385.5).

III. COMPLIANCE

A. REQUIREMENTS AND PROHIBITIONS

1. Every 1966 or later year model vehicle subject to registration in the State shall be equipped with a certified device to control crankcase and exhaust emissions. (§ 24390 (a))

2. On and after December 1, 1965, every motor vehicle of 1963 or later model subject to registration in the State shall be equipped with a certified device to control crankcase emissions. (§ 24390 (b))

3. Upon transfer of ownership and registration to an owner whose residence is in a county or portion of a county within an air pollution control district which may function and exercise its powers:

    a. every motor vehicle of 1955 through 1962 year model subject to registration in the State shall be equipped with a certified device to control crankcase emissions (§ 24390 (c)).

    b. every motor vehicle of 1955 through 1965 year model subject to registration in the State shall be equipped with a certified device to control exhaust emissions (§ 24390 (d))

4. On and after--

    a. December 1, 1967, every 1968 or later year model passenger vehicle, except motorcycles, and

    b. December 1, 1968, every 1969 or later year model truck, truck-tractor, or bus, except those which are diesel-powered,

    subject to registration and first sold and registered in this State shall be equipped with a certified device to control crankcase and exhaust emissions. The Motor Vehicle Pollution Control Board may only grant an exemption for not to exceed one percent of a manufacturer's truck, truck-tractor and bus sales or passenger vehicle sales in California in the preceeding model year. (§ 24390 (g) and (i))

5. On and after December 1, 1966, every 1967 or later year model commercial motor vehicle under 5,001 pounds unladen, subject to registration and first sold and registered in the state shall be equipped with a certified device to control crankcase and exhaust emissions. (§ 24390 (h)).

6. No person shall sell, display, advertise, or represent as certified a device not certified. No person shall install or sell for installation an uncertified device. (§ 24395 as amended by § 9.5, Ch. 2031, Laws 1965, 1769, S.B. 317).

B. EXEMPTIONS

1. The provisions contained in III (A) (1), III (A) (2), and III (A) (3) above shall not be applicable to:

    a. Any motor vehicle or class of motor vehicles exempted by the Motor Vehicle Pollution Control Board.

    b. Any motor-driven cyclye, implement of husbandry or vehicle which qualifies for special license plates. (§ 24390 (e)).

2. The provisions contained in III (A) (3) above shall not be applicable:

    a. In air pollution control districts formed between January 1, 1964 and the effective date of the amendments enacted in the 1965 regular session of the Legislature. (§ 24390 (f)).

    b. To motor vehicles registered to an owner whose residence is in any county in which an air pollution control district may function and exercise its powers if (1) prior to the effective date of this provision, the Board of Supervisors of the county has found pollution control devices for motor vehicles is unnecessary for preservation of air quality in the county, and (2) no air pollution control district has been authorized to function and exercise its powers in any county adjacent to such county; nor shall such provisions be applicable to motor vehicles registered to an owner whose residence is in any county adjacent to such a county, which adjacent county is included within the boundaries of an air pollution control district created by special law to include the area of two or more counties, and in which county such air pollution control district created by special law may transact business and exercise its powers. (§ 24390 (k)).

c. To motor vehicles registered to an owner whose residence is in an area of any county having an area in excess of 7,000 sq. miles in which an air pollution control district consisting of a single county may function and exercise its powers and within 60 days after the effective date of this provision the Board of Supervisors has classified the county into two areas because of substantial geographic and climatic differences between the two areas and found that within one of such areas pollution control devices for motor vehicles are unnecessary for the preservation of air quality within that area. (§ 24390 (1)).

3. Vehicles manufactured in 1938 or before, if operated or moved on the highway solely for the purpose of taking them to a place for historical exhibition, are exempted from the provisions of this act (§ 24381).

C. PENALTY

Any violation of this part is a misdemeanor (§ 24396).

IV. AUTHORIZED MOTOR VEHICLE POLLUTION CONTROL TESTING LABORATORIES

The Board designates qualified and equipped laboratories to analyze and determine, on the basis of Board standards, devices which are designed and equipped to meet State standards and Board Criteria (§ 24398).

The Board is authorized to contract for the use of, or performance of tests or other services by, any laboratories (§ 24398).

All devices tested for purposes of certification must be tested by a procedure which includes tests of the device to measure its ability to control the emission of pollutants while a vehicle is operating at full performance. (§ 24399, added by Section 9.7, Ch. 2031, Laws 1965, 1769, S.B. 317).

2. Air Pollution Control Districts

I. GENERAL STATEMENT

The Air Pollution Control District Act, enacted in 1947, establishes statewide standards for air pollution control with enforcement on a county basis at local option.

Air contaminant is defined to include "smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, odors, or particulate matter, or any combination thereof" (§ 24208). The statute prohibits contaminant discharge:

(1) for periods in excess of 3 minutes in any one hour which is as dark or darker than Ringelmann No. 2 or has the same or greater opacity as Ringelmann No. 2 (§ 24242).

(2) which may cause injury or annoyance to the public, or endanger the comfort, health or safety of a person or cause or tend to cause injury to business or property (§ 24243).

The statute creates in each county an air pollution control district (§ 24200), except that in a unified district each county is a zone of that district (§ 24333).

II. ADMINISTRATIVE ORGANIZATION

A. ESTABLISHMENT OF COUNTY AIR POLLUTION CONTROL DISTRICT

An air pollution control district is established in each county (§ 24200) with boundaries coextensive with the county (§ 24201) or, in districts formed by two or more contiguous counties, with boundaries the same as those of the several counties of which it is comprised (§ 24330 and 24332).

B. AUTHORIZATION OF DISTRICTS TO FUNCTION:

Air pollution control districts are authorized to function only after a resolution by the appropriate county board of supervisors declaring that there is need for an air pollution control district to function in the county (§ 24202) or after ratification by the boards of supervisors of two or more counties of the agreement of their representatives to form a unified district (§ 24331).

The resolution is authorized only if, from evidence received at a public hearing (§ 24203) as to which required public notice has been given (§ 24204), it is found that there is need for a district to function because:

1. The air within the county is so polluted with air contaminants as to be injurious to health, or an obstruction to the free use of property, or offensive to the senses of a considerable number of persons, so as to interfere with comfortable enjoyment of life or property.
2. It is not practical to rely upon the enactment or enforcement of local county and city ordinances to prevent or control the emission of smoke, fumes or other substances which cause or contribute to such pollution (§ 24205).

C. POWERS

Upon adoption of the resolution the district has the following powers:

1. To have perpetual succession.
2. To sue and be sued.
3. To adopt a seal and alter it.
4. To take by grant, purchase, gift, devise or lease; hold, use, enjoy; and to lease or dispose of real or personal property of every kind within or without the district necessary to the full exercise of its powers.
5. To lease, sell or dispose of any property when such property is no longer required for the purposes of the district or may be leased for any purpose without interfering with the use of the same for the purposes of the district and to pay any compensation received therefor into the general fund of the district (§ 24212).

D. AIR POLLUTION CONTROL BOARD

1. Organization and composition

The board of supervisors of a county is, ex officio, the air pollution control board of the air pollution control district in such county (§ 24220) and the boards of supervisors of the zones comprising a unified district are, ex officio, the air pollution control board of the district (§ 24335).

2. Duties and powers

a. The air pollution control board may make, enforce and perform all other acts for the administration of the district (§ 24260) necessary or proper to accomplish the purposes of the Act. It may take steps to reduce the amount of air contaminants released in the district if it finds that the air is so polluted as to cause any discomfort or property damage at intervals to a substantial number of persons in the district (§ 24262).

b. Such orders, rules and regulations may be made only after a public hearing of which the required public notice has been given (§ 24261).

c. The board may require by regulation that before any person builds, erects, alters, replaces, operates, sells, rents, or uses any article, machine, equipment or other contrivance specified by such regulation the use of which may cause the issuance of air contaminants, such person must obtain a permit to do so from the air pollution control officer (§ 24263) but is to be allowed a reasonable time within which to apply for a permit and to furnish the air pollution control officer required information. The board may by regulation establish standards of performance for any equipment or method specifically designed or intended for use upon any motor vehicle as defined in the Vehicle Code to control the issuance of air contaminants and may prohibit the sale of such equipment until the air pollution control officer has approved it and issued a permit authorizing its sale (§ 24263.7). However, no permit is needed for any vehicle as defined in the Vehicle Code (S B 503 -- 1957). Statutory exemptions to such requirements are (1) mobile equipment, (2) dwellings for not more than four families, (3) an incinerator or barbecue equipment used exclusively in connection with such a dwelling, (4) repairs or maintenance not involving structural changes to any equipment for which a permit has been granted, (5) use of equipment in agricultural operations in the growing of crops or raising of fowls or animals, (6) use of an orchard or citrus grove heater which does not produce unconsumed solid carbonaceous matter at a rate in excess of one gram per minute except that the air pollution control board of any county, any part of which lies south of the Sixth Standard Parallel South, Mount Diablo Base and Meridian may at its discretion require operators of grove heaters to obtain permits. In no event may such operator be denied a permit if such heaters produce unconsumed solid carbonaceous matter at the rate of one gram per minute, or less (§ 24265).

d. The air pollution control board may contract with the county or any city within the district and the county and any such city may contract with the air pollution control district for assistance in regulation of installations which may issue air contaminants (§ 24266).

e. The air pollution control board appoints an air pollution control officer (§ 24222) and may provide for him to employ assistance (§ 24223). His duties are to enforce the provisions of the statute, orders, regulations and rules of the air pollution control board, all variance and standards prescribed by the hearing board (§ 24224) and all provisions of the Vehicle Code regarding control of air contaminants. In counties having a civil service system the air pollution control officer and all of his assistants are to be appointed pursuant to civil service provisions (§ 24228). In the enforcement pursuant to (§ 24224) the air pollution control officer is a peace officer (§ 24231). He may enter buildings to enforce pertinent provisions of the Vehicle Code as well as this Act (§ 24246). He is immune from criminal prosecution for acts done in the performance of official duty (§ 24254).

f. The air pollution control board appoints a three-member hearing board. No member may be otherwise employed by the air pollution control district or by the county. Two must have been admitted to practice law in California and one must be a chemical or mechanical engineer (§ 24225). The members serve staggered terms of three years each after the termination of the original term (§ 24226).

E. FINANCING

1. The board of supervisors of a county in which an air pollution control district has been activated may appropriate funds to such district to be deposited in the treasury of the district (§ 24209) and the board of supervisors of each zone in a unified district is to appropriate necessary funds as determined by the air pollution control board (§ 24337) to be deposited into the district treasury (§ 24339).

2. Fees

   a. The air pollution control board may provide a schedule of fees for the cost of issuing permits and inspection (§ 24267). The fees may be paid to a city or officer or agency thereof when a contract for assistance has been made or into the district treasury (§ 24268).

b. The air pollution control board may provide a schedule of fees for the cost of handling variance orders (§ 24293). Such fees are to be paid into the district treasury (§ 24294).

III. PROHIBITED EMISSION: OPERATIONS EXEMPTED

A. PROHIBITED EMISSIONS (ARTICLE 3)

1. A person shall not discharge into the atmosphere from any single source of emission any air contaminant for periods aggregating more than three minutes in any one hour which is

   (a) as dark or darker in shade than Ringelmann No. 2, or

   (b) of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke as dark as Ringelmann No. 2 (§ 24242).

2. A person shall not discharge from any sourch such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or tend to cause injury or damage to business or property (§ 24243).

B. EXEMPTIONS

1. Exempted from the prohibitions are smoke from necessary fires set by or permitted by any public officer in the performance of his official duty to abate weeds, to prevent a fire hazard, or to instruct public employees in the methods of fire fighting (§ 24245).

2. The prohibitions of (§ 24242) do not apply to:

   a. Agricultural operations in the growing of crops or raising of fowls or animals;

   b. The use of an orchard or citrus grove heater which does not produce unconsumed solid carbonaceous matter at a rate in excess of one gram per minute;

   c. The use of other equipment in agricultural operations in the growing of crops, or raising of fowls or animals (§ 24251); or

d. Smoke from open burning for which a permit has been issued by the air pollution control officer in accordance with a rule of the district board (sec. 24245.1).

IV. PROCEDURES

A. COMPOSITION AND ORGANIZATION OF HEARING BOARD

1. The hearing board of an air pollution control district consists of three members appointed by anair pollution control board (§ 24225). The hearing board selects a chairman from its members (§ 24311).

2. The board may hold a hearing en banc or may designate two or more of their number to hold a hearing (§ 24312).

3. If two or three members conduct a hearing the concurrence of two is necessary for a decision (§ 24313).

4. The chairman of the board may issue subpoenas requiring a witness to appear to testify and to produce books, papers and documents (§ 24315).

5. The board may administer oaths (§ 24320) and require witnesses to be sworn (§ 24321).

B. PERMITS - SUSPENSION AND REVOCATION OF PERMITS

1. An air pollution control officer may suspend a permit if the permittee does not furnish him with requested information and must serve on the permittee notice in writing of and the reasons for such suspension (§ 24270). When the information is furnished the permit is to be reinstated (§ 24272). The air pollution control officer may reinstate the permit when "good reasons" exist (§ 24273).

2. Within 10 days after receipt of notice of suspension a permittee may file with the hearing board a demand for a public hearing (§ 24271).

3. An air pollution control officer may request a public hearing regarding reinstatement of a permit which has been revoked or suspended (§ 24274).

4. Within 30 days after a request for a public hearing the hearing board must give not less than 10 days notice of the time and

place of such hearing to the permittee, to the air pollution control officer and to such other persons as the board deems should be notified (§ 24275).

5. After a public hearing, the hearing board may

   a. Continue the suspension of a permit,

   b. Find that no violation exists and reinstate an existing permit,

   c. Remove the suspension pending furnishing by the permittee of the information required,

   d. Or revoke an existing permit if it finds

      (1) The permittee has failed to correct any conditions required by the air pollution control officer,

      (2) A refusal of a permit would be justified,

      (3) Fraud or deceit was employed in the obtaining of the permit, or

      (4) Any violation of the air pollution control statute or of any rule or regulation of the air pollution control board (§ 24276).

C. VARIANCES

1. The hearing board may permit variances (§§ 24291, 24292, 24296). At least 10 days' notice of the time and place of a hearing to grant a variance must be given to the air pollution control officer and to the applicant (§ 24295).

2. The hearing board in making any order permitting a variance may specify a time not to exceed one year during which the order will be effective. It may be continued from year to year on the approval of the air pollution control officer (§ 24301).

3. The hearing board may revoke or modify by written order, after a public hearing held upon not less than 10 days' notice, any order permitting a variance (§ 24298).

4. A variance granted under a local ordinance prior to activation

of an air pollution control district is to be continued for the time specified therein or for one year, whichever is shorter or until the hearing board revokes or modifies such variance (§ 24303).

D. APPEALS

A trial de novo and an independent determination of the reasonableness and legality of an action of the hearing board may be had in the superior court by a person, including the air pollution control district, aggrieved by such action (§§ 24322 and 24323).

V. VIOLATIONS AND PENALTIES

A. INJUNCTION

Violation of Article 3 of the statute (§ 24242, 24243) regarding prohibited contamination or of any order, rule or regulation of the air pollution control board may be enjoined (§ 24252).

B. THE FOLLOWING ARE PUNISHABLE AS MISDEMEANORS:

1. A violation of Article 3 or any order, rule or regulation of an air pollution control district. Each day during any portion of which such violation occurs constitutes a separate offense (§§ 24253 and 24281).

2. Knowingly making any false statements in any application for a permit to use a contrivance causing issuance of air contaminants or in any information, analyses, plans or specifications submitted in conjunction therewith or at the request of the air pollution control officer (§ 24277).

3. The building, erecting, altering, replacing, using or operating of any source capable of emitting air contaminants for which a permit is required when the permit to do so has been suspended or revoked (§ 24278), or when no permit has first been obtained (§ 24279), or contrary to the provisions of any permits issued under regulations adopted pursuant to Article 3 (§ 24280).

4. Willful failure or neglect of a permittee to furnish information, analyses, plans or specifications required by the air pollution control officer (§ 24282).

5. Obstructing an air pollution control officer in entering a

building (except a building designed for and used exclusively as a private residence) or in detaining and inspecting any vehicle designed and used on a public highway but which does not run on rails (§ 24246).

C. CONTEMPT

Failure to obey a subpoena of the hearing board is punishable as contempt. The judge of the superior court of the county, upon receipt of a report of the contempt from the board, is required to issue an attachment of the body. The same penalties may be imposed and the same punishment inflicted on the violator as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a superior court (§§ 24317, 24318, 24341).

VI. SCOPE AND CONSTRUCTION

The Legislature does not intend to occupy the field of air pollution legislation by this Act and does not prohibit any local ordinance stricter than the provisions of the statute or rules and regulations adopted thereunder, nor do these supersede any such local county or city ordinance. The prosecution or punishment of a violation of a local ordinance committed when the ordinance was in full force and effect is not barred if it should be held that these provisions of the statute supersede the local ordinance (§§ 24247-24249).

3. Bay Area - San Francisco

I. GENERAL STATEMENT

The Bay Area Air Pollution Control District Act was enacted in 1955 to provide a special district to control and suppress air pollution in the San Francisco Bay area because of the special problem created there by the permanent temperature inversion layer.

The statute creates a district composed of nine counties which is a body corporate and politic and a public agency of the State (§ 24350).

The definition of "air contaminant" is the same as that given in the Air Pollution Control District Act with the addition of "mist" as a contaminant (§ 24348.3). (For prohibited emissions see Item III infra, sec. 24360).

II. ADMINISTRATIVE ORGANIZATION

A. ACTIVATION OF THE DISTRICT

1. The district may transact business and exercise its powers on the effective date of this law in the Counties of Alameda, Contra Costa, Marin, San Francisco, San Mateo and Santa Clara (§ 24350.2).

2. In the Counties of Napa, Solano, and Sonoma the district may not transact business nor exercise its powers until the board of supervisors of a county, after giving prescribed notice, on its own motion or on petition of electors, holds a public hearing to determine if there is need for the district to function in the county (§§ 24350.3, 24350.4 and 24350.5).

3. From and after the date of the filing of a certified copy with the board of the resolution by the board of supervisors, declaring the need for the Bay Area Air Pollution Control District to function, the district begins to function and may exercise its powers within the county (§ 24350.8).

B. BOARD OF DIRECTORS OF BAY AREA AIR POLLUTION CONTROL DISTRICT

1. Composition and organization

   a. The board is the governing body of the district and exercises all the powers of the district except as otherwise provided (§ 24352.3).

b. The board of supervisors of each county in which the district is activated appoints one of its members to be a member of the board. The city selection committee of each such county (composed of mayors or presiding officers of cities) appoints a member of the board, such member to be selected from among the mayors and city councilmen of the cities within such county (§ 24352).

c. Each member appointed by the board of supervisors holds office for four years and each member appointed by the city selection committee holds office for two years (§ 24352.1).

d. Members of the board may be removed at any time by the appointing authorities (§§ 24352.1 and 24352.2).

e. If a member ceases to be a mayor, supervisor or councilman, his membership on the board is terminated no later than three months thereafter (§ 24352.8, Ch. 267, Laws 1963, approved May 7, 1963).

f. A majority of the members of the board constitutes a quorum for the transaction of business (§ 24352.4).

g. The board is to establish and maintain offices wherever it deems will best facilitate the accomplishment of district objectives (§ 24354.3).

h. The board decides when and where to meet (§ 24354.4).

i. The board appoints its chairman and other officers from its members (§ 24354.5).

2. Powers and duties

a. General Authority

The district has the power

(1) To have perpetual succession.

(2) To sue and be sued.

(3) To adopt a seal and alter it.

(4) To take by grant, purchase, gift, devise, or lease; hold, use, enjoy; and lease or dispose of real or

personal property of every kind necessary to the full exercise of its powers.

(5) To lease, sell or dispose of any property or interest therein when it is no longer required for the purposes of the district, or may be leased without interfering with its use for the purposes of the district, and to pay any compensation received therefor into the general fund of the district (§ 24354).

b. The board may appoint an executive secretary (§24352.6).

c. The board may cooperate and contract with any federal, state or local governmental agencies, private industries, or civic groups as necessary or proper to the accomplishment of the purposes of the district (§ 24352.7).

d. The board appoints an air pollution control officer (§ 24355).

(1) The air pollution control officer enforces the provisions of the statute, orders, regulations, and rules prescribed by the board, and variances and standards prescribed by the hearing board (§ 24355.2).

(2) The air pollution control officer, subject to statutory limitations, appoints his personnel (§ 24355.1).

(3) He may require certain information and analyses from persons subject to regulations of the board (§ 24362.4).

e. The board may contract for the conducting of competitive examinations for applicants for employment and for the performance of any other service connected with the administration of the district (§ 24354.8).

f. The board may by ordinance adopt a civil system for employees of the district, except the executive secretary and air pollution control officer are exempt from such system and serve at the pleasure of the board (§ 24354.9).

g. The Board of Directors appoints a Bay Area Air Pollution Control District Advisory Council which consists of twenty members, ten of whom must represent specified groups of the community (§ 24356).

h. The board appoints a three-member hearing board, one member to be a lawyer and one a chemical or mechanical engineer (§ 24357).

i. After adoption of a resolution made upon proper notice and hearing the board may adopt and enforce rules and regulations to control the release of air contaminants (§§ 24362 and 24362.1). When the board finds that the air in the district is so polluted as to cause discomfort or property damage to a substantial number of the inhabitants of the district it may make and enforce such general orders, rules, and regulations as will reduce the amount of air contaminants released; but no such order shall specify the design of equipment, type of construction or particular method to be used in reducing the release of air contaminants (§ 24362.3).

j. Except as provided in sections 24360.1 and 24360.2 (see III B. 1 and 2 below) orders, rules and regulations of the Board apply to all State agencies, political subdivisions, public and quasi-public corporations and public service corporations (sec. 24360.9).

C. THE AIR POLLUTION CONTROL DISTRICT MAY BE DISSOLVED ACCORDING TO STATUTORY PROCEDURES (§ 24372).

III. PROHIBITED EMISSIONS

A. Discharge from any source of such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to business or property is prohibited (§ 24360).

B. THIS SECTION DOES NOT APPLY TO THE FOLLOWING:

1. Smoke from fires set by public officers, as a part of their public duties, for the purposes of weed abatement, prevention of fire hazard or necessary instruction of public employees in methods of fire fighting (§ 24360.1).

2. Smoke from fires set, or permitted, by the agricultural commissioner of any county as a part of agricultural operation for growing crops or raising fowls or animals, if set or permitted in the course of his official duty; nor to smoke from fires set or permitted by the State Forester or his agent for watershed, range or pasture improvement, if the fire is set

or permission given in the performance of their official duties. In neither case may the fire set nor permission given violate rules or regulations laid down pursuant to Sec. 24362.3 (See II. B. 21, supra) (24360.2 as amended by Chapter 1329, Laws of 1959).

3. Odors resulting from agricultural operations in growing crops or raising fowls or animals. (Sec. 24360.8)

C. This Act does not occupy the field, and the enactment and enforcement of county or city ordinances stricter than, or identical to, the rules and regulations adopted pursuant to this Act is expressly permitted. (Sec. 24360.3 - Sec. 24360.5, Sec. 1, Chapter 698, Laws of 1959) See item VII infra for variances.

D. Open Outdoor Fires

It shall be unlawful for any person, firm, corporation, association, or public agency to ignite, cause to be ignited, permit to be ignited, or suffer, allow, or maintain any open outdoor fire within the district, except as provided in this article. (Sec. 24361 - Sec. 24361.5, Sec. 1, Chapter 1739, Laws of 1965)

"Open outdoor fire," as used in this article, means any combustion of combustible material of any type outdoors, in the open, not in any enclosure, where the products of combustion are not directed through a flue. "Flue" as used in this article, means any duct or passage for air, gases or the like, such as a stack or chimney. (Sec. 24361.1)

Fires excepted from this provision are:

1. Fires used only for cooking of food for human beings or for recreational purposes.
2. Any fire set or permitted by any public officer, in the performance of official duty, if such fire is set or permission given for the purpose of weed abatement, the prevention of a fire hazard, including the disposal of dangerous materials where there is no safe alternate method of disposal, or in the instruction of public employees in the methods of fighting fires.
3. Fires set by or permitted by the county agricultural commissioner for the purpose of disease and pest control.
4. The board may make additional exceptions and may amend or revoke such exceptions to this article by general order, rule, or regulation adopted pursuant to this chapter. (Sec. 24361.2)

Nothing in this article is intended to permit any practice which is a violation of any statute, ordinance, rule, or regulation. (Sec. 24361.3) Nothing in this article limits the power of the board to make needful orders, rules, and regulations pursuant to other provisions of this chapter. Nothing in this article permits any action contrary to such order, rule, or regulation. (Sec. 24361.4) Any violation of the provisions of this article is a misdemeanor and is punishable by a fine of not more than $500 or by imprisionment not exceeding six months, or both. (Sec. 24361.5)

IV. PROCEDURES

A. HEARING BOARD

1. Composition and organization

    a. The hearing board, appointed by the air pollution control district board, consists of three members (§ 24357).

    b. The hearing board shall select its chairman from its members (§ 24367.1).

    c. A hearing may be held en banc, or by one or two of the members (§ 24367.2).

    d. The concurrence of two is necessary to a decision if two or three members conduct a hearing (§ 24367.3).

2. Powers

    a. The hearing board may issue subpoenas (§ 24367.5).

    b. Members of the hearing board may administer oaths (§ 24367.10).

    c. The hearing board may permit variances (§ 24365).

V. VIOLATIONS AND PENALTIES

A. FAILURE TO OBEY A SUBPOENA

1. Failure to appear before a hearing board to give evidence or to produce books and papers in response to a subpoena is contempt and is to be reported by the hearing board to the judge of the superior court of the county in which the person resides (§ 24367.7).

2. Upon receipt of the report, the judge of the superior court issues an attachment and has jurisdiction of the matter upon production of the body of the defendant (§§ 24367.8 and 24367.9).

3. The same punishment and penalties attach to such defedant as in the case of a witness subpoenaed in the trial of a civil cause before a superior court (§ 24367.9).

B. FAILURE TO OBEY RULES, ORDERS, OR REGULATIONS OF THE AIR POLLUTION CONTROL DISTRICT BOARD

1. The Control Officer may file an accusation with the District Hearing Board that any person has violated rules and regulations of the District Board of Directors. If, after hearing, the Hearing Board finds there have been violations and that no variance is justified it shall certify the case to the District Attorney.

2. The District Attorney shall petition the Superior Court for an injunction restraining such person from any activity causing or threatening pollution. The court shall issue an order requiring such person to show cause why the injunction should not be issued (§ 24367.11, as amended by Ch. 698, Laws 1959).

3. Further proceedings shall be conducted in the same manner as any other action for an injunction except that the court shall receive in evidence a transcript of the proceedings before the Hearing Board and such other evidence as the court, in its discretion, deems proper (§ 24367.11, as amended by Ch. 698, Laws 1959).

4. The District Attorney may associate with him in the prosecution of such case the counsel for the Board (§ 24367.11, as amended by Ch. 698, Laws 1959).

C. GRIEVANCES AGAINST HEARING BOARD

1. Any person, including the district, deeming himself aggrieved may maintain a special proceeding in a superior court within the district to determine the reasonableness and legality of any action of the hearing board (§ 24367.12).

2. In such a special proceeding after any decision of the hearing board the court is authorized to exercise its independent judgment on the evidence and to make an independent determination of the reasonableness and legality of such action in such court on all issues of law, facts and mixed questions of law and facts and opinions therein involved (§ 24367.13).

VI. FINANCES

A. TAXATION

Each board of supervisors is required to levy for the benefit of the district an ad valorem tax on the taxable property, but not on intangible personal property, within the county, which tax is a lien upon the property. Collection may be enforced as are liens for county taxes. The amount of money required by a district in a year may not exceed one cent and three mills on each one hundred dollars of all the property therein (§§ 24370.1, as amended by Chapter 298, Law 1965; § 24370.2 and .3)

B. LOANS

The district may borrow money for the current or ensuing year in amounts not to exceed the total amount of the estimate of the tax for the current or ensuing year (§ 24370).

C. FEES

The Board of Directors of the district may provide a schedule of fees for the filing of applications for variance, etc. (§ 24365.2, 24365.3).

VII. VARIANCES

A. The hearing board may on its own motion or at the request of any person hold a hearing after required notice to determine under what conditions and to what extent a variance from the requirements established by Article 10 or by rules, regulations, or orders of the board is necessary and will be permitted (§§ 24365.1 and 24365.4).

B. Variances may be permitted if compliance with Article 10 or with any rule, regulation, or order of the air pollution control board will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity without sufficient corresponding benefit to the people in the reduction of air contamination, but no variance may permit the maintenance of a nuisance (§ 24365.5).

C. Variances may be revoked or modified by written order after a public hearing held upon not less than ten days' notice (§ 24365.7).

D. The hearing board is to specify the time during which a variance order is to be effective, in no event to exceed one year, but such variance may be continued from year to year on the approval of the control officer (§ 24365.10).

E. Prior local variances may be continued for the time therein specified but no longer than one year unless prior to the time of expiration the hearing board revokes or modifies such variance (§ 24365.11).

4. Rapid Amortization of Air Pollution Control Devices

Effective with income years beginning after December 31, 1954, a taxpayer may, at his election, claim a deduction with respect to amortization of the adjusted basis (for determining gain) of any device, machinery or equipment for the collection at the source of atmospheric pollutants and contaminants based on a period of 60 months. The period will begin, at the election of the taxpayer, with the month following the month in which the equipment was completed or acquired, or with the succeeding income year.

(Sec. 17226 (for individual persons) and Sec. 24372, (for banks and corporations), Revenue and Taxation Code, West's Annotated California Codes)

DIGEST OF AIR POLLUTION CONTROL LAWS

Colorado [1/]

1. Air Pollution Control Act

I. GENERAL STATEMENT

House Bill 1024 requires the use of all available air pollution control, reduction and prevention practical methods. Toward this policy it establishes ambient air standards and prohibits specific actions. It creates a nine member air pollution variance board as a division of the public health department.

II. DEFINITION

1. "Person" means any individual, public or private corporation, partnership, association, firm, trust, estate, the state or any department, institution, or agency, thereof, any municipal corporation, county, city and county, or other political subdivision of the state, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties. (Sec. 3 (4)).

2. "Air contaminant" means a dust, fume, gas, mist, smoke, vapor (other than water vapor alone), pollen, or any combination thereof. (Sec. 3 (5)).

3. "Air pollution" is the presence in the atmosphere of one or more air contaminants in quantities, or characteristics, and of a duration throughout the state or throughout such areas of the state as shall be affected thereby, which are injurious to human, plant, or animal life or to property, or which unreasonably interfere with the comfortable enjoyment thereof. (Sec. 3 (6)).

4. "Air contamination" or "emission" means the discharge into the atmosphere of one or more air contaminants which contribute to a condition of air pollution. (Sec. 3 (7)).

5. "Air contamination source" means any source whatsoever at, from, or by reason of which there is emitted or discharged into the atmosphere any air contaminant. (Sec. 3 (8)).

6. "Ambient air" is the surrounding or outside air. (Sec. 3 (9)).

7. "Air cleaning device" is any method, process, or equipment which removes, reduces, or renders less noxious air contaminants discharged into the atmosphere. (Sec. 3 (10)).

[1/] House Bill 1024 which repeals Chapter 66, Article 24, Laws 1963 and Chapter 58, Laws 1964.

8. "Gas" is a formless fluid which occupies space and which can be changed to a liquid or solid state only by increasing pressure with decreased or controlled temperature, or by decreased temperature with increased or controlled pressure. (Sec. 3 (12)).

9. "Ringelmann" means the method of estimating smoke density described in U. S. bureau of mines information circular 7718, dated August 1955, by means of the Ringelmann chart. (Sec. 3 (13)).

III. AIR AND EMISSION STANDARDS

A. Ambient Air

Any contamination by particulates and gases above the following limits is declared unacceptable:

1. Kind of particulate	Average measurable limits for any 3-month period
Suspended particulates	120 micrograms per cubic meter
Coefficient of haze	0.5 Coh units (Sec. 4 (2(a)))

2. Gases	Measurable limits based on (1%) one percent of the time during any 3-month period
Total oxidant	.1 part per million for one hour using a potassium iodide test method
Oxides of nitrogen	.1 part per million for 1 hour
Sulfer dioxide	.5 parts per million for 1 hour or - .1 part per million for 24 hours (Sec. 4 (3(a)))

B. Sampling Stations

Sampling stations are to be located and operated as close to the following criteria as possible:

1. Located in the central business district of a city or community and at such other places as the division determines desirable, approximately twenty-five to fifty feet above ground level and where a single emission source is not the prime polluter of the air being sampled with samples to be collected on a regular three-day basis. (Sec. 4 (2) (b) (i)).

2. Sites and conditions of gas sampling shall be chosen as to realistically represent the exposures of persons and property which might be affected. (Sec. 4 (3) (b)).

3. All sampling of exhaust gases shall be conducted following techniques designated by the appropriate air pollution control

authority. All sulphur present in gaseous compounds containing oxygen shall be deemed to be present as sulphur dioxide, and analyses of samples taken to determine the amound of sulphur dioxide in exhaust gases shall be made as specified by the air pollution control authority. Tests shall be for at least fifteen consecutive minutes or ninety per cent of the time of actual source operation, whichever is less. (Sec. 5 (6) (a)).

C. Emission Standards

The following are prohibited:

1. To discharge or cause to be discharged into the atmosphere, from any single emission source, any air contaminant for a period aggregating more than 3 minutes during any hour which is a shade as dark or darker as, or an apacity equal to or greater than smoke in No. 2 on the Ringelmann chart or of any other nationally accepted measuring system comparable to the Ringelmann method. (Sec. 5 (2)).

2. To allow solid matter in combustion gas from any fuel-burning equipment in excess of 0.85 pounds per 1000 pounds of such gas, adjusted to 12 per cent carbon dioxide, or solid particulates in any other gas in excess of 0.85 pounds per 1000 pounds of undiluted gas, to escape into the atmosphere or pass any convenient measuring point in a discharge system. (Sec. 5 (3)).

3. To cause or allow any emission of sulphur dioxide which results in average ground-level concentrations in excess of one part per million, based on volume, of sulphur dioxide in a twenty-minute period of any hour. Average exposure shall not exceed three-tenths parts per million, based on volume, in any eight-hour period. Such limitations shall not apply to ground-level concentrations occurring on the property from which emission occurs; provided, the property is controlled by the person responsible for such emission. Nor shall any person cause or permit the emission of gas containing sulphur dioxide in excess of two thousand parts per million, based on volume. (Sec. 5 (6) (a) (b)).

4. Sulphur dioxide emissions in excess of specified limits does not constitute a violation if the following conditions are met:

a. Written notification of the air pollution control authority prior to emission.

b. Provision of at least 3 sulphur dioxide monitoring stations and a meteorological recording station to record wind speed and direction.

c. Filing of instrument data at end of each month with air pollution control authority. When emission is in excess of limits, said person must furnish proof of proper reduction or prevention action to the Air Pollution Authority. (Sec. 5 (6) (c)).

D. Storage Facilities

1. Any storage, holding, stationary tank, reservoir, or other container having a capacity of forty thousand or more gallons used for gasoline or any petroleum distillate having a vapor pressure of one and one-half pounds per square inch absolute, or greater, under actual storage conditions, shall be designed and equipped with one of the following vapor loss control devices, properly installed, in good working order, and in operation. The control equipment shall not be used if the gasoline or petroleum distillate has a vapor pressure of eleven pounds per square inch absolute, or greater, under actual storage conditions. All tank gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.

2. A floating roof consisting of a pontoon type or double-deck type roof, resting on the surface of the liquid contents and equipped with a closure seal, to close the space between the roof edge and tank wall. A vapor balloon, or vapor dome, designed in accordance with accepted standards of the petroleum industry. Propane or butane, and similar products, shall be stored in pressure tanks maintaining working pressures sufficient at all times to prevent hydrocarbon vapors or gas loss to the atmosphere, or at refrigerated low temperature, or in low pressure storage equipped with vapor collection and compression equipment designed to prevent loss of hydrocarbon vapor or gas to the atmosphere. (Sec. 5 (5) (a) (b)).

3. Any other petroleum storage tank which is constructed or extensively remodeled on or after the effective date of this act shall be equipped with a submerged filling device. (Sec. 5 (5) (c)).

4. All facilities for dock loading or petroleum products, having a vapor pressure of one and one-half pounds per square inch absolute or greater, at loading temperature, shall provide for submerged filling. (Sec. 5 (5) (d)).

IV. COLORADO AIR POLLUTION VARIANCE BOARD

A. Composition and Organization

The board composed of eight members appointed by the governor and one member designated by the state health board. The appointed members shall be; one who is a registered professional engineer with at least five years experience and who is not from industry, one who is either a state licensed physician or toxicologist and not connected with industry, three representatives from state industries, and three representatives of the public at large, not from industry.

The appointed members shall serve four year terms, except that the first terms will be staggered. The health board member will serve at the discretion of the health board. Vacancies will be filled by gubernatorial appointment for the remainder of the original term. The governor may remove any appointed member for cause.

The board shall meet at least quarterly, and special meetings may be called by the chairman on his own initiative or upon written request of two or more members or by the administrative division of the public health department. Three days notice shall be given each board member prior to meetings. Four members constitute a quorum, and a majority concurrence is needed for any determination.

The chairman shall be elected annually from among the membership, except the health board member shall chair the board the first year.

Each member shall receive a $20. per diem for each day spent in discharge of official duties, not to exceed $1,200. per year. He shall be reimbursed for actual and necessary expenses incurred in duty performance. (Sec. 7.1, .2, .3).

B. Powers and Duties

The Colorado Air Pollution Variance Board shall have the following duties and powers:

1. To grant variances. (Sec. 7 (4) (b)).

2. To report to the general assembly on the effectiveness of this act's provisions to carry out its intent and include any recommendations in regard to needed or desirable legislative changes. (Sec. 7 (4) (c)).

3. After designation of a state area by the public health division as one in which air and emission standards are not being met, to hold a public hearing in that area to hear public comments on the air pollution problem, alleged sources of air pollution, and practical remedy availability. (Sec. 7 (4) (d)).

4. To hold public hearings, conduct investigations, compel the attendance of witnesses, receive pertinent and relevant proof as it deems necessary, proper or desirable to effectively discharge its duties and responsibilities. (Sec. 7 (5) (b)).

5. To designate a hearing officer to conduct hearings only concerning violations of this act. The officer shall have power to issue notices of hearings and subpoenas requiring the attendance of witnesses and the production of evidence, to administer oaths, and to take such testimony as may be necessary. Such hearing officer shall certify and file with the air pollution variance board for adoption or modification by said variance board such hearing officer's recommended findings, conclusions and proposed orders. (Procedure: 3.16, C.R.S. 1963). (7) (5) (c))

C. Colorado Public Health Department Administrative Division

Duties and Powers

1. To determine, by means of field studies, air monitoring, and sampling, if the ambient air standards are being violated in any state area and to designate such area by legal description. Also to be included are adjacent areas from which air contamination does or is likely to contribute to air pollution. The determination in regard to adjacent areas shall be based upon meteorological and topographical considerations. (Sec. 8 (1) (b) (c)).

2. Once a year to report to the members of the general assembly on the effectiveness of the provisions of this act in carrying out the legislative intent, and to include any recommendations with respect to legislative changes needed or desirable, including changes in standards. (Sec. 8 (1) (d)).

3. To conduct studies and research of air pollution and its control, abatement or prevention. (Sec. 8 (2) (b)).

4. To designate one or more persons or agencies in any area of the state as an air pollution control authority and division agent to exercise and perform such powers and duties as may be specified in such designation and to furnish required personnel to the air pollution variance board to carry out its duties and responsibilities. (Sec. 8 (2) (c) (g)).

5. To enter and inspect any property, premise, or place for the purpose of investigating either an actual or a suspected source of air pollution or air contamination or ascertaining compliance or noncompliance with any emission standard or any order under this act. (Sec. 8 (2) (d)).

6. Provide advisory technical consultation services to local communities. (Sec. 8 (2) (e)).

7. To inform the appropriate governmental agency of the results of atmospheric tests conducted in its jurisdiction and notify the city, town, county, or city and county affected whenever tests establish that the ambient air or a source, or sources, of emission of smoke or air contaminant fail to meet the established standards. From time to time after the local agency has been so notified, the division shall report and make available to the public such results, notices to local agencies, and any progress made by the local agency following such notices. (Sec. 8 (2) (f)).

8. To serve as the state agency for the receipt of moneys from the federal government or other public or private agencies with respect to air pollution control activities. (Sec. 8 (2) (h)).

9. To certify, qualify, or otherwise designate to any other agency

or department of the government of this state or of any other state or of the federal government that any facility, land, building, machinery or equipment, or any part thereof, has been constructed, erected, installed, or acquired in conformity with the requirements of this state or of this act for control of air pollution or in conformity with the requirements for control of air pollution of any other state or the federal government. (Sec. 8 (2) (i)).

10. In the performance of its duties and in the exercise of its powers as set forth in this act the division shall be subject to the supervision of the state board of health. (Sec. 8 (3)).

V. PROCEDURE

A. Local Government Authority

1. Home rule and second class cities, towns and counties as well as cities and counties are authorized to enact local air pollution laws providing for variances, hearings, judicial review and injunctions consistent with this act. They may include the same standards or more restrictive ones than those established. Local laws may control any air contamination or source not subject to control under this act. (Sec. 6 (1)).

2. To the extent a local air pollution law adopted by a county is more restrictive than such a law adopted by any city or town within the county, the county law shall apply in lieu of the city or town law to the extent of the inconsistency. (Sec. 6 (3)).

3. Application, operation, and enforcement of valid local air pollution laws shall be completely independent of, but may be concurrent with, the application, operation, and enforcement of this act. The appointment of an air pollution control authority by the division shall in no way affect the duties and responsibilities given the same person or agency under a local air pollution law, and the appointment of an air pollution control authority by a local governmental unit shall in no way affect the duties and responsibilities given the same person or agency by the division. (Sec. 6 (4)).

4. Any local governmental authority enforcing air pollution control standards which shall issue any enforcement order or grant any variance shall, at the time of such issuance or granting, transmit to the division a copy of the order or variance. Any local governmental authority having adopted a local air pollution law prior to such date, shall transmit to the division a report setting forth sufficient information concerning any and all enforcement orders or variances, or both, issued or granted prior to the effective date of this act. (Sec. 6 (5)).

B. Enforcement

1. The public health department administrative division shall enforce

compliance with emission standards. (Sec. 10 (1)).

2. When a written complaint is filed or the division has cause to believe a violation of standards exists, the division shall make a prompt investigation. If it determines a violation does exist, it shall attempt by conference, conciliation and persuasion to eleminate the source of the air pollution or air contamination. (Sec. 10 (2)).

3. When conference, conciliation, or persuasion fails to correct or remedy such violation, the division shall issue and reserve upon the alleged violator a written order which specifies the provision of the emission standards said to be in violation and a statement of the manner in which such person is said to violate it. The order shall require the person to cease and desist from such violation within a reasonable time which the division may determine. (Sec. 10 (3)).

4. Within ten days after receipt of such order, the recipient may file with the air pollution variance board a written request for a hearing as to whether or not such violation exists or for a variance, or both. Upon the filing of such a request, the order complained of shall be stayed pending the air pollution variance board's final determination. In the event the determination pertains solely to the question of whether or not a violation exists, the order shall be stayed an additional thirty days within which the recipient may file a written request for a variance. (Sec. 10 (4)).

C. Emergency Orders

1. Whenever the division shall determine, after investigation, that any person is discharging or causing to be discharged, directly or indirectly, into the atmosphere any air contaminant which constitutes a clear, present, and immediate danger to the health of the public, the division shall issue a written order to said person requiring immediate discontinuation of the discharge of such contaminant into the atmosphere; whereupon such person shall immediately discontinue such discharge. If such person continues the discharge, the division may apply to any state district court for the district in which the said discharge is occurring for a temporary restraining order, temporary injunction, or permanent injunction. (Colorado rules of civil Procedure). Such action in the district court shall be given precedence over all other matters pending in the court. The institution of such injunction proceedings by the division shall confer upon said district court exclusive jurisdiction to determine finally the subject matter of the proceedings. (Sec. 9).

D. Variances

1. The board may grant a variance, suspending or modifying the enforcement of any emission standard, or any rule, regulation, or enforcement order issued pursuant to this act against any person, whenever the board shall determine that such variance would be consistent

with the aid in implementing the legislative policy. (Sec. 11 (1)).

2. Whenever the said board determines that strict compliance with any provision of, or order issued pursuant to, this act would result in an arbitrary and unreasonable taking of property or in the practical closing of any lawful business or activity and would be without sufficient corresponding public benefit. (Sec. 11 (2)).

3. The variance shall be granted, terminated, or modified only after a hearing before the air pollution variance board. A variance may be granted with respect to any existing or proposed facility, process, or activity, regardless of whether it is located within or outside of any designated area of the state. Hearings may be requested either by the air pollution variance board, the division, or by any person applying for or having received such a variance. (Sec. 11 (3)).

4. A variance shall be granted for such period of time and under such conditions as shall be specified by the air pollution variance board. The failure to meet any condition of the variance without prior written permission of the board shall render the variance null and void. The board shall review, at least annually, any variance that has been granted to determine whether the terms and conditions of said variance have been complied with, and whether the continuance of the variance is justified. (Sec. 11 (4)).

E. Hearings

1. Hearings shall be conducted pursuant to the following provisions and 3.16, C.R.S. 1963. (Sec. 12 (1)).

2. The division may appear as a party in any hearing before the air pollution variance board and shall have the same rights to judicial review as any other party. (Sec. 12 (2)).

3. All testimony taken shall be under oath or affirmation. A full and complete record of all proceedings and testimony presented shall be taken and filed. The stenographer shall furnish, upon payment and receipt of any fees allowed therefor, a certified transcript of the whole or any part of his record to any party in such hearing requesting the same. (Sec. 12 (3)).

4. The public shall be heard to the extent deemed reasonable and proper by the board. (Sec. 12 (5)).

5. In all proceedings before the board with respect to alleged violations of any emission standard or order, the burden of proof shall be upon the division. (Sec. 12 (7)).

6. After due consideration of the written and oral statements, the testimony, and the arguments presented, the board shall enter its findings and final order, or make such final determination of the

matter as it shall deem appropriate. (Sec. 12 (6)).

F. Confidential Information

Any information relating to secret processes, methods of manufacture or production obtained in the course of an inspection or which may be required, ascertained or discovered at a hearing shall be kept confidential. If samples of air or air contaminants are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person who is suspected of causing such air pollution or air contamination. (Sec. 8 (2) (d), 12 (4)).

VI. JUDICIAL REVIEW

A. Any final order or determination by the air pollution variance board is subject to judicial review in accordance with 3.16, C.R.S. 1963.

Any party may move the court to remand the case to the board to adduce additional specified and material evidence, and findings thereon if such party can show grounds for failure to adduce such evidence previously before the board.

Any proceeding for judicial review shall be filed within 20 days of the final order or determination's date in the district court for the district where the affected air contamination source is located. (Sec. 13).

B. Injunctions

If any person fails to comply with a cease and desist order that is not subject to a stay pending administrative review, the division may request the district attorney for the district in which the alleged violation exists or the attorney general to bring a suit for an injunction to prevent any further or continued violation of such order. It shall be his duty to bring such a suit. Any finding of the air pollution variance board shall be prima facie evidence of the fact or facts found therein. An injunction proceeding may be consolidated with judicial review of any final order or determination of the air pollution variance board. (Sec. 14).

VII. VIOLATIONS AND PENALTIES

1. Any person who in any designated area of the state shall violate any of the emission standards specified in this act and effective in such area, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars. Each day during which such a violation occurs shall constitute a separate offense. (Sec. 15 (1)).

2. Any person who shall violate any emission standard specified in any local air pollution law, within the jurisdiction of the local

governmental unit enacting the same, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars. Each day during which such a violation occurs shall constitute a separate offense; However, no person shall be prosecuted pursuant to both state and local laws for the same activity. (Sec. 15 (2) (3)).

3. Each facility, process, and activity that is a source of air contamination shall be deemed to be in full compliance with the emission standards specified either in this act or in any local air pollution law unless and until a cease and desist order, issued with respect to such facility, process, or activity has become final by exhaustion of all rights to administrative and judicial review, including any variance proceedings. (Sec. 15 (4)).

VIII. SCOPE AND CONSTRUCTION

1. The basis for proceedings or other actions that shall result from violations of any standard inure solely to and shall be for the benefit of the people of the state generally and it is not intended to create in any way new or enlarged private rights or to enlarge existing private rights, or to diminish private rights. (Sec. 16 (1)).

2. A determination that air pollution or air contamination exists or that any standard has been disregarded or violated, whether or not a proceeding or action may be brought by the state, shall not create by reason thereof any presumption of law or finding of fact which shall inure to or be for the benefit of any person other than the state. (Sec. 16 (2)).

3. The provisions of this act shall not apply to air pollution insofar as such pollution exists within the confines of particular commercial or industrial plant, works, or shop which is the source of such pollution and also shall not apply or affect the relations between employers and employees with respect to or arising out of any condition of air pollution. (Sec. 16 (3)).

4. It is the purpose of this act to provide additional and cumulative remedies to prevent and abate air pollution and air contamination. Nothing in this act contained shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any provision of this act or anything done by virtue of this act be construed as stopping individuals, cities, towns, counties, cities and counties, or the state or duly constituted political subdivisions thereof from the exercise of their respective rights to suppress nuisances. (Sec. 16 (4)).

5. This act provides for severability. (Sec. 18).

IX. REPEAL

Article 24 of Chapter 66, C.R.S. 1963 and Chapter 58, 1964 session laws are repealed.

X. APPROPRIATION

Fifty thousand dollars ($50.000) is appropriated to the state department of public health.

XI. EFFECTIVE DATE

Approved March 11, 1966.

2. Burning Regulations

No person shall burn or permit to be burned on any open premises owned or controlled by him, or on any public street, alley, or other land adjacent to such premises, any rubbish, waste paper, wood, or other flammable material, unless a permit therefor shall first have been obtained from the appropriate authority enforcing air pollution control standards. In granting or denying the issuance of any such permit, said authority shall base its action on the location and proximity of such burning to any building or other structure, the potential contribution of such burning to air pollution in the area when the same may violate any standard in this section, climatic conditions on the day or days of such burning, and compliance by the applicant for the permit with applicable fire protection and safety requirements of the local authority or area. (Sec. 5 (4) (a)).

The following are exempt:

1. Burning in the course of any agricultural operation in the growing of crops;

2. Fires used for noncommercial cooking of food for human beings or for instructional or recreational purposes;

3. Incineration of paper and other trash on residential premises by the owner or occupant thereof.

4. Smokeless flares or safety flares for the combustion of waste gases; or

5. Flares used to indicate some danger to the public. (Sec. 5 (4) (b)).

3. Motor Vehicle Pollution Control

By Joint Resolution the Colorado Legislature resolved that the Department of Revenue include crankcase ventilation systems in the items of automotive equipment required to be inspected on those vehicles which are factory-equipped with the same (House Joint Resolution No. 1022, adopted, February 26, 1964).

No gasoline powered automobile or truck manufactured in the Unites States shall be issued an official certificate of inspection and approval unless it is equipped with a crankcase ventilating system designed to prevent the emission of air contaminants which contribute or which are likely to contribute to a condition of air pollution.

The manufacturer of new gasoline propelled automobiles and trucks of a model year later than 1965 shall, prior to the sale of such vehicles in the state, certify in writing to the Department of Revenue that such vehicles are equipped with such crankcase systems. (Colorado revised statutes sec. 13-5-148, added by House Bill 1103, approved April 1, 1965.)

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Connecticut [1]

1. Interstate and State Study

The Interstate Sanitation Commission, composed of Connecticut, New Jersey and New York is authorized to make a study of air pollution within the boundaries of New Jersey and New York. The State of Connecticut is not to be liable for any of the expenditures necessary for the undertaking nor to be called upon to appropriate any funds for the purpose (§ 25-66 (a)).

In 1957 Connecticut enacted a statute directing various State agencies to undertake studies regarding the need for changes in and additions to laws and regulations administered by each of them that would arise from the presence within the State of special nuclear materials and by-product materials. The agencies are directed to propose necessary legislation. Among the agencies included is the State department of health which is directed to study "hazards...to the public health and safety, including, without limitation, air pollution..." (§ 19-408).

2. Motor Vehicle Junk Yards, Burning

Section 21-22a., adopted in 1959 provides:

"Each new location of motor vehicle junk yard shall be completely surrounded with a solid fence...and any burning of material...must be carried on within this enclosure. Permits for such burnings shall be obtained from local authorities."

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[1] Citations refer to General Statutes of Connecticut, Revision of 1958 as amended. General Statutes Annotated contains parallel citations.

3. Study and Control by Commissioner of Health [1]

I. DEFINITION OF AIR POLLUTION

"'Air pollution' means the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in such quantities and of such duration as are or may tend to be injurious to human, plant or animal life or property or as unreasonably and repeatedly to interfere with the comfortable enjoyment of life or property."

II. POWERS OF THE COMMISSIONER OF HEALTH:

A. To provide services for the study, abatement and prevention of air pollution;

B. To advise, consult and cooperate with other state agencies, Connecticut political subdivisions, interstate agencies, the Federal government, industries and other affected agencies or groups in matters relating to air pollution;

C. To collect and disseminate the results of studies relating to air pollution; and

D. To accept and administer Federal grants-in-aid, or gifts or donations to the department of health to carry out the provisions of this act.

III. EFFECTIVE DATE

These provisions became effective October 1, 1963.

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[1] Public Act 216, Laws 1963; approved June 3, 1963

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Delaware[1]

1. Delaware Water and Air Resources Commission

I. GENERAL STATEMENT

Chapter 442 of 1966 laws regulates the development and conservation use of water, underwater lands and air. It abolishes the water pollution, air pollution and geological commissions and creates a water[2] and air resources commission. This provides programs for the utilization and pollution control of the resources and protection and conservation thereof. It also provides programs of research and development and cooperation with other agencies and utilities.

II. DEFINITIONS

A. "Air Pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life or to property, or which unreasonably interfere with the enjoyment of life and property within the jurisdiction of the state, excluding all aspects of employer-employee relationships as to health and safety hazards. (Sec. 7.6202 (a)).

B. "Air Contaminant" means particulate matter, dust, fumes, gas, mist, smoke, or vapor, or any combination thereof. (Sec. 7.6202 (b)).

C. "Air Contaminant Source" is any source from which there is emitted into the atmosphere any air contaminant including all types of commercial and industrious plants and works, heating and power plants and stations, shops and stores; buildings and other structures, including single and multiple family residences, apartment houses, office buildings, public buildings, hotels, restaurants, schools, hospitals, churches, and other institutional buildings; automobiles, trucks, tractors, buses and other motor vehicles; garages; vending and service locations and stations; railroad locomotives; ships, boats and other waterborne craft; portable fuel-burning equipment; incinerators of all types, indoor and outdoor; and refuse dumps and piles. (Sec. 7.6202 (c)).

III. DELAWARE WATER[3] AND AIR RESOURCES COMMISSION

A. Composition and Organization

The commission shall consist of seven commissioners appointed by the governor plus two ex-officio members: The governors alternate on the Delaware River Basin Commission and the State Geologist.

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[1] All citations refer to Delaware Code Annotated, 1953.

[2] There will be no further mention of water or underwater land.

[3] All powers and duties concerned with water will be omitted.

The commissioners shall be as follows: The Wilmington City Water Commissioner, one each from Wilmington City, New Castle County, Kent County and Sussex County. Distribution among political parties shall be four to three. The commissioners shall have two year terms, but the chairman shall serve at the pleasure of the governor. Commissioners will receive no compensation, but are entitled to necessary expenses in performance of duty.

The commission shall meet as it determines with a majority of the members constituting a quorum. It will make an annual report to the governor and general assembly. (Secs. 7.6002, .6004, .6005).

B. Powers and Duties

The commission shall have the following powers:

1. To develop a comprehensive program for the prevention and control of all air pollution sources of the state. (Sec. 7.6203 (1)).

2. To advise, consult and cooperate with other agencies of the state, political subdivision, industries, other states, the Federal government and with affected groups and receive money therefrom for the study of resources pollution and to represent this state in any and all matters pertaining to plans, procedures or negotiations for interstate compacts in relation to air pollution control. The commission may cooperate with and receive moneys from the Federal government or any industry or other source. Such moneys received are appropriated and made available for the study of water and air resources and pollutions. (Secs. 7.6203 (2) (12), 7.6016).

3. To encourage and conduct studies, investigations and research relating to air pollution and its causes, prevention, control and abatement, to collect and disseminate information relating to air pollution, its prevention and control; and to encourage voluntary cooperation by the people, municipalities, counties, industries and others in restoring and preserving the purity of air within the state. (Sec. 7.6203 (3) (4) (8)).

4. To promulgate rules and regulations and issue orders consistent with the purposes of this Chapter including regulation of the installation of new equipment which will emit air contaminants and to enforce compliance with the laws of this state relating to pollution of the air. (Sec. 7.6203 (5) (11)).

5. To consider complaints, make investigations and hold hearings; and to enter at reasonable times upon any private or public property for the purpose of investigating conditions relating to air pollution. (Sec. 7. 6203 (6) (10)).

6. To require any person to submit plans for the removal of air contaminants. (Sec. 7.6203 (7)).

7. To select advisory committees to study and advise upon specific problems which may arise from time to time and to employ personnel, including specialists and consultants, purchase materials and supplies, and enter into contracts. (Secs. 7.6203 (13) (9)).

8. To give due recognition to the quantity and characteristics of air contaminants or the duration of their presence in the atmosphere which, while causing air pollution in one area of the state, may cause less or no air pollution in another area. It shall consider such factors as existing physical conditions, zoning classifications, prevailing wind direction and speed and that a rule applicable to a residential area may not be proper for a highly developed industrial area. (Sec. 7.6203).

IV. EXECUTIVE DIRECTOR

The Executive Director shall be appointed by the commission and shall have professional training in the field of water or air resources management. He shall recommend other employees, agents and consultants for appointment.

Subject to the commissions control, he shall be in charge of its day to day operations, keep proceedings records, and preserve commission books, maps and papers. (Sec. 7.6003).

V. PROCEDURE

A. Rules

The commission may adopt rules and regulations and issue general and special orders, upon approval in writing by at least five members. Such rule, regulation or order requires 20 days published notice in a newspaper of general circulation in the state and in each county of the state. (Sec. 7.6011).

B. Enforcement

The commission will try by conference, conciliation or persuasion to obtain compliance by a violator. If this cannot be obtained, written notice specifying the complaint will be given such person requiring correction within a specified time or that he appear before the commission. The notice will be served as summons or by registered mail. (Sec. 7.6006).

C. Hearings

Hearings are to be held with respect to any permit, lease variance or grant application or to hear a complaint against an alleged violator by any commission member or a designated representative. Subpoenas may be issued at the request of the applicant or alleged violator. The Superior Court of the involved county has jurisdiction to inforce a hearing notice or subpoena upon commission request.

Proceedings records, findings and conclusions shall be taken and filed by the commission. A final order, based on the presented evidence, shall be entered by the commission and written notice given to the affected person. (Sec. 7.6007, .6008, .6009).

D. Variances

Variances may be granted only after a hearing by the commission. (Sec. 7.6007).

E. Emergency Action

When conditions require immediate action, the commission may issue a written order to the responsible person requiring immediate discontinuation of harmful contaminant discharge. A hearing will be held as soon as possible concerning the discharge effect. (Sec. 7.6206).

F. Confidential Information

It shall be a misdemeanor for any commission member, employee or consultant to disclose confidential information obtained while performing his duties or to use any information obtained for any purpose other than function, responsibility and duty administration. (Sec. 7.6014).

VI. FEES

A fee schedule for filing a permit, lease or grant application may be established by the commission. The necessary expenses for processing the application and conducting a hearing may also be collected. (Sec. 7.6018).

VII. JUDICIAL REVIEW

A. Appeals

1. When a person's interest is substantially affected by any action of the commission, he may file with the commission secretary an appeal notice within 20 days of the rule or order notice mailing by the commission. Such appeal shall be signed by the appellant or his attorney. (Sec. 7.6012 (a)).

2. When immediate action is required to protect public health, the commission order or rule shall be stayed pending appeal disposition. (Sec. 7.6012 (b)).

3. Appeals shall be taken in the Superior Court of the county where the circumstances causing the appeal originated. The appeal shall be heard and determined as a case in law and equity. (Sec. 7.6012 (d) (e)).

VIII. VIOLATIONS AND PENALTIES

A fine of not more than $500 shall be levied for each violation failure or refusal. Each day of continued violation shall be a separate offense. The Superior Court shall have jurisdiction of offenses. (Sec. 7.6013)

IX. SCOPE AND CONSTRUCTION

Nothing in this act shall preclude any city or town governing body's right to adopt local laws, ordinances or regulations consistant with this act and which do not call for a lesser degree of control.

X. EFFECTIVE DATE

July 1, 1966. Approved, July 1, 1966.

2. Nuisances

The discharge into the air of solids, liquids or gases causing injury to human, plant or animal life or property constitutes a public nuisance. It is illegal to cause, erect or continue any such nuisance.

Proceedings to abate air pollution created nuisances may be instituted at law or in equity in the name of the state or on behalf of the commission. (Sec. 7.6205).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

District of Columbia [1]

I. GENERAL STATEMENT

Reorganization Order No. 57, as amended November 7, 1961, applying to the Department of Public Health, gives the Department the responsibility for the coordination and development of a comprehensive air pollution program. The Commissioners promulgated this order pursuant to § 6-801, which prohibits the discharge of dense smoke from any building, stationary or locomotive engine, or motor vehicle, place or premises within the District, and § 6-804, which allows them to delegate their enforcement power to the police or public health departments or any officer of the District. Title 6, Chapter 8 of the D. C. Code was enacted by Congress as P. L. 74-279.

At present there are scattered laws and regulations with respect to emission of pollutants, which are administered by several agencies.

II. DEPARTMENTAL RESPONSIBILITIES

A. DEPARTMENT OF PUBLIC HEALTH

The Department of Public Health is charged with controlling the pollution caused by dusts, noxious odors and gases, pursuant to the prohibitions of the Consolidated Ordinances of the Board of Health, legalized by Joint Resolution of Congress, April 24, 1880, as amended.

1. Office of the Director

The functions of the Office of the Director include:

a. Developing major programs, policies, and regulations on air pollution and proposing them to the Board of Commissioners (Reorg. Order No. 57, III, A, 1);

b. Collaborating with the U. S. Public Health Service, D. C. departments and other agencies in the Washington area in performing research and in surveying and monitoring the air in order better to develop an air pollution control program;

c. Reviewing and analyzing the effectiveness of air pollution inspections and controls on motor vehicles, buildings and open fires administered by other departments and proposing changes consistent with program objectives;

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[1] Citations refer to District of Columbia Code, 1961, unless otherwise specified.

d. Coordinating all phases of the air pollution program within D. C. and assisting in coordinating programs in the entire metropolitan area; and

e. Keeping the public informed on air pollution matters (Reorg. Order No. 57, III, A, 14).

2. Bureau of Environmental Health

The functions of the Bureau include:

a. Sampling of gaseous contaminants in the air;

b. Coordinating study of air pollution damage to plants;

c. Preparing for the Director periodic reports on the air pollution activities of all D. C. departments and agencies involved in the program; and

d. Notifying the public of impending or potential temperature inversion periods (Reorg. Order No. 57, III, H, 4).

B. DEPARTMENT OF LICENSES AND INSPECTIONS

Reorganization Order No. 55, as amended, gives the Department of Licenses and Inspections the responsibility of enforcing the fuel burning equipment regulations of the District (adopted pursuant to Title 6, chapter 8, D. C. Code), and charges its Inspection Division with evaluating the effectiveness of the existing air pollution regulations and proposing changes in them necessary to achieve the overall air pollution control objectives.

C. DEPARTMENT OF MOTOR VEHICLES

Organization Order No. 105, as amended, charges the Department of Motor Vehicles with the responsibility of inspecting motor vehicles for the prevention of air pollution. Section 144 (b) of the Traffic and Motor Vehicle Regulations prohibits motor vehicle emissions as dark as or darker than Ringelmann No. 2.

III. PENALTY

Violation of the statutory provisions or a regulation is punishable by a fine of up to $500 for each offense (§ 6-803).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Florida [1]

1. Air Pollution Control Commission

I. GENERAL STATEMENT

The 1957 Florida Air Pollution Control Act established an air pollution control commission in the State Board of Health (§ 403.03), and provided for the establishment of air pollution districts and for State enforcement of the commission's air pollution control rules and regulations in such districts.

Air pollution is defined as:

> "The presence in the outdoor atmosphere of substances in quantities which are injurious or reasonably could be expected to become injurious to human, plant or animal life; provided that all aspects of employer-employee relationship as to health and safety hazards are excluded; and provided further, the term air pollution shall not be deemed to include smoke effluent from pulp or paper mills equipped with and operating electrostatic precipitators or other mechanical devices whereby not less than ninety (90%) per centum of the solids of such smoke are removed therefrom" (§ 403.02(3)).

II. ADMINISTRATIVE ORGANIZATION

A. AIR POLLUTION CONTROL COMMISSION

1. Composition and organization

The air pollution control commission is composed of ten members, residents of Florida, to be appointed by the Governor as follows: The State health officer or some member of the staff of the State Board of Health designated by him; the commissioner of agriculture or a member of the Department of Agriculture designated by him; a person actively engaged in raising cattle; the director of the Florida industrial commission or a member of its staff designated by the director; one professional engineer experienced in sanitary engineering; two representatives from industry; two citizens of Florida representing the general public; and a person actively engaged in growing citrus (§ 403.03). The commission may employ an executive assistant and necessary clerical help (§ 403.07, as amended by S. Bill No. 882, Reg. Session 1963, law without approval June 12, 1963).

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[1] Citations refer to Florida Statutes Annotated and 1961 Cumulative Annual Pocket Part.

Florida--Continued

The commission is to elect annually from its membership a chairman and vice-chairman. The State sanitary engineer or other professional employee designated by him with the concurrence of the Commission shall serve as secretary of the commission (§ 403.07, as amended by S. Bill No. 882, Reg. Session 1963, law without approval June 12, 1963).

Five members of the commission constitute a quorum, but any action must be by at least a majority of the entire commission (§ 403.07).

After the expiration of terms of the members of the first commission, terms are to be for four years each and staggered (§ 403.04).

Members of the commission serve without compensation but are entitled to statutory per diem and travel expenses (§ 403.06).

The governor may remove any appointed member for cause after public hearing (§ 403.05).

2. Powers and duties

The commission has the power to consult with the Board of Health on all matters relating to the carrying out of the Act.

a. Rules and regulations

The commission has the power to formulate, adopt, promulgate, amend and repeal rules and regulations:

(1) without prior notice and hearing to control and regulate the internal affairs of and procedure before itself, and

(2) after notice and public hearing to control and prohibit pollution of the air in any air pollution control district if at the public hearing a preponderance of the evidence shows need for such action (§ 403.09).

b. Hearings

(1) The commission is required to have five or more members present for any hearing which it holds.

(2) Any member has the power to subpoena witnesses, administer oaths, and require the production for ex-

amination of books or papers, excluding financial records, relating to any matter under investigation at the hearing. Information regarding secret processes or methods of manufacture or production are to be kept confidential and are not to be disclosed in public hearing before the commission, insofar as practicable (§§ 403.11 - 403.16).

c. Creating and dissolution of districts

The commission may organize and create within the State such air control districts as are necessary for the prevention of air pollution as defined by statute. Such districts may consist of one county or any part thereof, or of two or more counties or parts thereof. A hearing after prior notice before the commission is required before the creation or dissolution of such a district (§ 403.12).

The hearing may be called:

(1) upon petition of the board or boards of county commissioners within the proposed district, or

(2) upon petition of 15 per cent of the freeholders within the proposed district, or

(3) upon the commission's own motion.

d. Advisory services

Every municipality and county is required to notify the commission of the establishment or proposed establishment of a plant within its jurisdiction which may contribute to air pollution. Within 30 days of such notice, the commission shall advise the plant owners of the availability of its advisory services and the plant may request that the commission prescribe reasonable advisory criteria as to the permissible emissions from the plant (sec. 403.09).

B. STATE BOARD OF HEALTH

1. The Board is required to control air pollution in accordance with the rules and regulations adopted by the commission and for this purpose has power to

a. conduct research programs to determine causes, effects and hazards of air pollution,

b. conduct statewide programs of air pollution control education,

c. require the registration of persons engaged in operations which may result in air pollution in any air control district,

d. require the filing of reports by such persons engaged in operations which may result in air pollution if such person consents or if the board, after notice and hearing so directs,

e. enter and inspect any building or place except private residences to investigate sources of air pollution or to ascertain compliance with the rules and regulations of the commission if the owner consents or the board, after notice and hearing, so directs; prior to the inspection, the inspector must execute an affidavit that all information obtained will be kept confidential except as it relates to air pollution (§ 403.10(1-4)),

f. receive or initiate complaints of air pollution, hold hearings and institute legal proceedings for the prevention of air pollution and recover penalties provided by statute,

g. cooperate with and receive money from the Federal government or from private sources for the study and control of air pollution (§ 403.10).

2. The board with the approval of the commission has power to employ necessary personnel (§ 403.08).

III. PROCEDURES

A. COMPLAINT AND CONFERENCES

Upon complaint filed with the board or upon its own belief that any person is violating a rule or regulation promulgated by the commission, the board is required to conduct a prompt investigation. If such violation is found to exist the board attempts to prevent such violation by conference, conciliation or persuasion (§ 403.13).

B. NOTICE AND HEARING

If, within 60 days after a complaint is filed or the board believes a violation exists, conference, conciliation or persuasion fails to halt the violation, written notice and a copy of the complaint requiring the person named in the complaint to appear before the commission, at a time and place stated in the notice, are served (§ 403.14, as amended by S. Bill No. 882, Reg. Session 1963, law without approval June 12, 1963).

C. HEARING PROCEDURE

The respondent to the complaint may file a written answer and may appear at the hearing in person or by representative, with or without counsel and may submit testimony. Testimony is under oath and recorded, but strict rules of evidence are not applicable (§ 403.15).

D. JUDICIAL REVIEW AND APPEALS (§ 403.19)

1. Review by the District Court of Appeals exercising jurisdiction over the greater portion of the area in which the air pollution control district lies is available to a person affected by the adoption or repeal of a rule or regulation or by the entry of any order of the commission, within 30 days after the commission action.

2. Within 20 days after the receipt of appeal the secretary of the commission is required to prepare, certify and forward to the appellant or his attorney a transcript of the proceedings, a copy of the order of the commission, and a copy of the notice of appeal, the cost thereof to be paid by the appellant (§ 403.19, as amended by S. Bill No. 882, Reg. Session 1963, law without approval June 12, 1963).

3. Within 30 days from the filing of the notice of appeal the appellant is required to file with the clerk of the circuit court the documents forwarded to him by the secretary of the commission.

4. The procedures of the court are to be confined to an examination of the record, including the transcript of all evidence, and no presumption is to be indulged concerning the correctness of the action of the commission.

5. These provisions do not preclude other appropriate proceedings in law or equity to determine the validity of any action of the commission.

IV. VIOLATIONS AND PENALTIES

A. If at the hearing the commission determines that the person against whom the complaint was made is violating any rule or regulation promulgated by the commission, it is required to fix a time, not to exceed 60 days unless "reasonably necessary", during which that person must take the measures necessary to prevent the violation and give periodic progress reports (§ 403.17, as amended by S. Bill No 882, Reg. Session 1963, law without approval June 12, 1963).

B. If preventive and corrective measures are not taken in accordance with the order of the commission, the commission shall institute proceedings in any court of competent jurisdiction for injunctive relief to prevent any further violation (§ 403.18, as amended by S. Bill No. 882, Reg. Session 1963, law without approval June 12, 1963).

C. Failure of the owner or operator to comply with an order of the commission is punishable by a fine of up to $300, and each day of violation constitutes a separate offense (sec. 6, H.B. No. 2124 - Laws 1961).

V. SCOPE AND CONSTRUCTION

A. No civil or criminal remedy which is available for a violation of a rule or regulation of the commission is impaired by the Act (§ 403.20(1)).

B. No ordinances or rules or regulations of a municipality, county or board of health not inconsistent with the Act are suspended by the Act (§ 403.20(2)).

C. The provisions in the Act for appeal do not preclude any person from pursuing other proceedings in law and equity to determine the validity of action by the commission (§ 403.19(4)).

VI. EFFECTIVE DATE

Approved June 18, 1957.

2. Alachua County [1]

I. GENERAL STATEMENT

The 1963 Legislature established a policy of preserving the purity of the air and water of Alachua County and charged the Board of County Commissioners with the responsibility of so doing.

II. ADMINISTRATIVE ORGANIZATION

The Board of County Commissioners has jurisdiction to control water and air pollution in the county.

A. POWERS OF THE BOARD

The Board has the following powers: [2]

1. To establish such air purity standards as are required to maintain the health, welfare, and comfort of the citizens of the County, as determined by the County Health Officer and the Board (§ 1 and § 2);
2. To adopt reasonable rules and regulations to prevent air pollution by any person, firm or corporation residing, or doing business, within the County (§ 1);
3. To institute any lawful appropriate action or proceedings to prevent, restrain, correct or abate the violation of its purity standards (§ 3).

III. PENALTIES

Violation of any provision of this act, or the standards of purity adopted hereunder, is a misdemeanor punishable by a fine of up to $500 or imprisonment for up to 30 days, or both (§ 4).

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[1] Citations refer to H. Bill No. 1674 which became law without approval June 3, 1963.

[2] Provisions dealing with water pollution are omitted.

3. Brevard County [1]

I. GENERAL STATEMENT

The 1959 Legislature established a policy of preserving the highest standards of purity of the air and waters of Brevard County and made the Board of County Commissioners the Brevard County Pollution Control Commission. It is charged with:

1. Promotion of recreational resources;
2. Propagation and protection of wildlife;
3. Facilitation of the growth of desirable natural plant and animal life and industrial development of the County consistent with maximum employment and full industrial development of the County.

To accomplish these ends, it may require the use of all available and reasonable methods to prevent and control water and air pollution (§ 1).

Air pollution is defined as "The presence in the outdoor atmosphere of substances put there by man in concentrations sufficient to cause an unreasonable interference with the comfort, safety, or health of man or the unreasonable (sic) use and enjoyment of his property." (§ 2 (2)).

II. ADMINISTRATIVE ORGANIZATION

The Board of County Commissioners is established as the Brevard County Pollution Control Commission (§ 1) with jurisdiction to control water and air pollution in the County (§ 3).

A. FUNCTIONS OF THE BOARD

The Board has the following functions: [2]

1. To enforce provisions of the Act;
2. For this purpose, to adopt rules, regulations and standards consistent with available and reasonable methods of controlling or preventing pollution and consistent with the public welfare (§ 4).

   In adopting regulations (§ 24), the Board shall take into account the reasonableness of the activities involved, including:

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[1] House Bill 1839 which became law without approval June 20, 1959. References are to sections of this Act.

[2] Provisions dealing with water pollution are omitted.

a. The character and degree of injury to, or interference with the comfort, safety, health, and the reasonable use and enjoyment of property;

b. Social and economic value of activity involved;

c. Suitability of the activity to the area;

d. The scientific and economic practicability of reducing or eliminating the discharge.

3. When a pollution emergency exists, to bring action for relief against such pollution by injunction or abatement (§ 5).

B. IN CARRYING OUT THESE PURPOSES THE BOARD MAY:

1. Appoint a control officer to observe and enforce the provisions of the Act and rules and regulations adopted pursuant to the Act (§ 19).

2. Enter, or authorize the entry of, any property to inspect and investigate conditions of pollution of water or air (§ 8).

3. Request the aid of educational institutions or State agencies (§ 9).

4. Authorize variances from the rules and regulations it lays down if compliance with the rules and regulations would result in depriving persons of the use of their property, without corresponding advantage to the public in the control of air pollution (§ 20).

5. After considering the recommendations of the Brevard County Zoning Board, designate areas in which the otherwise prohibited erection of antennas, smokestacks, chimneys, and similar structures in excess of 150 feet in height will be permitted (H. Bill 1836, Reg. Session 1963, law without approval June 11, 1963).

III. RULES AND REGULATIONS

A. RULES AND REGULATIONS

Rules and regulations shall be adopted by the Board after a public hearing held after 10 days' notice (§ 24).

B. ABATEMENT

Whenever the control officer is of the opinion that a person is violating any provision of the Act or any rule or regulation relating to air pollution, he shall notify such person of his determination by registered mail. Within 15 days of the receipt of such notice that person shall file with the control officer a full report as to the steps taken or to be taken to control or prevent the alleged air pollution. The control officer may then issue his order setting forth the particulars in which the person is failing to comply with such rules and regulations and ordering him to remedy such failure within a stated time. The order shall be sent by registered mail to the person affected (§ 22).

C. VARIANCE

The Board, on its own motion or that of any interested person, may hold a hearing to determine the extent, if any, and under what conditions it will permit variance from the requirements established by the Act as to air pollution. Ten days' notice shall be given to the petitioner and to the control officer, if any, of the time and place of hearing (§ 20). In determining whether the variance shall be permitted, the Board shall exercise a wide discretion in weighing the equities involved and the advantages and disadvantages to residents of the area and to lawful business and activities in the area resulting from requiring compliance or permitting variance. If a change in conditions results in a substantial change in the equities and the advantages and disadvantages, the Board may revoke or modify the variance by written order held after 30 days notice to the persons or classes affected (§ 21).

IV. MISCELLANEOUS

A. CRIMES AND OFFENSES

Persons found guilty of wilfully violating any provision of the Act or final orders or directives of the Board or court issued in pursuance of the Act are guilty of a misdemeanor and may be punished by a fine of not more than $250 or by imprisonment in the county jail for not more than one year of both. Each day in which such violation continues is a separate offense.

B. This Act does not apply to smoke from fire set or permitted by any public officer in the performance of his official duty:

1. For weed abatement.

2. For the prevention of fire hazards.

3. For instruction in methods of fire fighting.

Neither does this Act apply to smoke from agricultural fires set or permitted by the County Agricultural Agent in the course of his official duty:

1. For disease prevention.

2. For pasture control.

3. Agricultural or forest harvest operation (§ 23).

4. (Broward) County [1]

I. GENERAL STATEMENT

A. Senate Bill No. 1326, Regular Session 1963, which became law without approval June 19, 1963, authorizes the Board of County Commissioners of any county having 300,000-350,000 population according to the last Federal census (Broward County is the only one answering this description) to control air and water* pollution through a County Pollution Control Board, created by resolution. The production of air pollution is declared to constitute a nuisance.

B. "Air pollution" is defined as "the presence in the outdoor atmosphere of one or more air contaminants or combination thereof in such quantities and of such duration as to be injurious to human, plant or animal life, or property, or which unreasonably interfere with the comfortable enjoyment of life or property, or the conduct of business" (§ 3 (3)).

"Air contaminants" include, but are not limited to, "smoke, charred paper, dust, soot, grime, carbon or any other particulate matter, or irritating, malodorous or noxious acids, fumes or gases, or any combination thereof, but shall not include uncombined water vapor" (Sec. 3 (2)).

II. COUNTY POLLUTION CONTROL BOARD

A. CREATION

By resolution of the Board of County Commissioners of any county having 300,000-350,000 population according to the last Federal census.

B. ORGANIZATION

The Board shall consist of 9 unpaid members, appointed by the Board of County Commissioners to serve overlapping four-year terms. The members shall be permanent residents and freeholders electors of the County and representative, as follows: One practicing medical doctor, who may be recommended by the County Medical Association; one professional engineer experienced in sanitary engineering, who may be recommended by the Local Chapter of the Florida Engineering Society; one actively engaged in agricultural operations; one actively engaged in the tourist industry; one representative of the conservation interests; one representative of industries or businesses directly affected by and subject to the provisions of this Act; and three representatives of the general public (Sec. 5).

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[1] All citations refer to S. Bill No. 1326, Reg. Session, 1963, which became law without approval June 19, 1963.
(*All further references to water pollution in the Act have been omitted.)

Members shall elect a chairman from among themselves.

Five members shall constitute a quorum for any business, but any action must be approved by a majority of the entire membership.

Meetings shall be public, and may be called by the chairman or by written notice signed by five members.

The Board of County Commissioners shall provide such personnel as may be reasonably required by the Board for the proper performance of its duties (Sec. 6 (1)).

C. POWERS AND DUTIES

The Board is empowered to:

1. Adopt and amend rules and regulations necessary for the control and regulation of air pollution, and provide for such control and regulation (Sec. 6 (2)).
2. Provide for appropriate fees to be charged by the county for services rendered under this Act (§ 6 (2)).
3. Make studies and periodic reports and recommendations for the improvement of air pollution control (§ 6 (3)).
4. Cooperate with appropriate agencies and groups interested in the field of air pollution (§ 6 (3)).
5. Investigate other air pollution control programs (Sec. 6 (4)); and
6. Conduct a program of public education on air pollution and its control (Sec. 6 (4)).

III. POLLUTION CONTROL OFFICER

A. When a Pollution Control Board is established and subject to the approval of the Board of County Commissioners, the Director of the County Health Department shall appoint a Pollution Control Officer, who shall be a licensed professional sanitary engineer experienced in air pollution and shall be subject to the supervision of the Director (Sec. 7).

B. The Pollution Control Officer is empowered to:

1. Enforce the provisions of this Act, the rules and regulations

promulgated thereunder and those of the State Board of Health concerning air pollution (Sec. 8 (1));

2. Investigate complaints and recommend institution of actions necessary to abate nuisances caused by air pollution and prosecution of proceedings for violation of this Act (Sec. 8 (4));
3. Make surveys and inspections to determine whether the provisions of this Act are being complied with (Sec. 8 (5));
4. Inspect property, facilities, equipment and processes operating under the provisions of this Act to determine whether their operations are complying with it, and recommend methods by which air pollution may be reduced or eliminated (Sec. 8 (6));
5. Maintain, review, and supervise all operating records required to be filed by persons operating facilities or equipment subject to the provisions of this Act (Sec. 8 (7));
6. Render assistance and technical advice to persons engaged in operations which may cause air pollution (Sec. 8 (8));
7. Establish a program for monitoring air pollution by means of a countrywide air quality surveillance network (Sec. 8 (9));
8. Conduct a public information program on air pollution and its control (Sec. 8 (10));
9. Render aid to the Florida State Board of Health in connection with the review of plans, specifications and processes filed in accordance with the requirements of this Act (Sec. 8 (11));
10. Cooperate with Federa, State, and local agencies relative to air pollution control (Sec. 8 (12));
11. Enlist public support, the cooperation of business and industry, and the assistance of civic, technical, scientific, and educational organizations (Sec. 8 (13));
12. Periodically file with the Director of the County Health Department reports on the status of air pollution in the County and the enforcement of this Act and the rules and regulations promulgated thereunder (Sec. 8 (14)); and
13. Perform various and other administrative duties assigned him by the Board of County Commissioners or the Director of the County Health Department (Sec. 8 (17)).

Florida--Continued

IV. PROCEDURES

A. RULES AND REGULATIONS

1. A public hearing of the Board, upon 10 days notice, must be held before any rule, regulation or amendment thereof may be adopted.

2. Before becoming effective, all rules, regulations and amendments adopted by the Board must be approved by the Board of County Commissioners and files with the Clerk of the Board (Sec. 6 (2)).

B. ENFORCEMENT - POLLUTION CONTROL OFFICER

1. Normal

If he finds or learns of a violation of this Act or the rules and regulations, the Pollution Control Officer shall serve a notice to correct or a citation to cease violation upon the alleged violator. This notice or citation shall set forth the general nature of the violation, and shall specify a reasonable time for compliance with its provisions. If voluntary corrective action is not forthcoming, the Pollution Control Officer shall, with the approval of the Director of the County Health Department, issue an order to cease operation of the offending facility, institute legal proceedings to compel compliance, or initiate proceedings to prosecute the violator for violation of this Act (Sec. 9).

2. Emergencies

If a violation of this Act or the rules and regulations creates an immediate health hazard or threatens immediate serious damage to public health or property, the Pollution Control Officer, with the approval of the Director of the County Health Department, may order immediate cessation of the operation causing such conditions. Willful failure to comply with such order shall be a misdemeanor, and each day of such failure shall constitute a separate offense (Sec. 10).

C. APPEALS - COUNTY AIR POLLUTION CONTROL BOARD

1. Any person aggrieved by any action or decision of the Pollution Control Officer may appeal to the Board by filing within 15 days of such decision a written notice of appeal specifying the decision and the grounds for appeal.

2. The Board shall hear such appeal at the earliest possible date, and shall serve notice of hearing on the appellant and the Pollution Control Officer.

3. After hearing, the Board may affirm, reverse, or modify the action or decision appealed from, provided only that it not act in conflict with the provisions of this Act.

4. There shall be no rehearing or reconsideration of the Board's decision on the administrative level (Sec. 11).

V. COURT REVIEW

Any person aggrieved by a decision of the Board on an appeal may apply for appropriate relief to the Circuit Court of the County (Sec. 11).

VI. PROHIBITION AND PENALTY

A. It shall be unlawful for any person to cause, or allow to be discharged into the air from any single source of emission any air contaminant as a visible emission, particulate matter, or sulfur dioxide, which exceeds the limits for time, total quantities and ground level concentrations as may be established in the rules and regulations (Sec. 12).

B. Violation of this Act or the rules and regulations shall be a misdemeanor (Sec. 15).

VII. APPROPRIATIONS

In each fiscal year, the Board of County Commissioners may budget and expend funds needed to carry out an adequate air pollution control program. This appropriation shall be specifically designated for use in air pollution, and used for the designated purpose exclusively (Sec. 13).

VIII. CONSTRUCTION AND SEVERABILITY

A. The provisions of this Act shall be liberally construed, provided that they shall not be construed as conflicting with provisions of the State Board of Health, the Air Pollution Control Commission or the State Board of Conservation nor as imposing a mandatory duty upon any Board of County Commissioners to establish a County Control Board (Sec. 16).

B. If any part of this Act is held invalid, the remainder shall not be affected (Sec. 17).

5. Duval County [1]

I. GENERAL STATEMENT

The 1965 legislature created the Duval air improvement Authority to control and regulate activities causing or able to cause injurious air pollution. The legislature also provided for injunctive relief, appeals from the Authority's actions, and for prohibitions against air pollution. The law specifically prohibits any person to cause, let, permit, suffer, or allow to be discharged into the atmosphere from any source of emission whatsoever any air pollutant which exceeds the limits for time, total quantities and concentrations as may be established by the rules and regulations of the Authority. (Sec. 16)

II. DEFINITIONS

1. "Person" means any natural person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, governmental agency, political subdivision, public officer, or any other entity whatsoever, or any combination of such, jointly or severally. (Sec. 2 (2))

2. "Air pollutants" are particulate matter, gas or odor, including smoke, charred paper, dust, soot, grime, or irritating, malodorous or noxious acids, fumes, or gases, or any combination thereof, but shall not include uncombined water vapor. (Sec. 2 (7))

3. "Air pollution" is the presence in the outdoor atmosphere of one or more air contaminants or combination thereof in such quantities and of such duration as to be injurious to human, plant or animal life, or property. (Sec. 2 (8))

4. "Combustible pollutant" is a particulate matter discharged into the atmosphere from the burning of any kind of material containing carbon in a free or combined state. (Sec. 2 (9))

5. "Combustible refuse" is any combustible waste material containing carbon in a free or combined state. (Sec. 2 (10))

6. "Condensed fumes" are minute solid particles generated by condensation of vapors from solid matters, volatilization from the molten state, or which may be generated by chemical processes, operation or reactions, when such processes create airborne particles. (Sec. 12 (11))

7. "Particulate matter" is any material which is emitted into the

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[1] Citations refer to House Bill No. 1675, approved June 24, 1965

atmosphere in a finely divided form as liquid or solid or both, but shall not include uncombined water vapor. (Sec. 12 (18))

8. "Standard conditions" means at ground level, a pressure of 14.7 pounds per square inch gauge, and a temperature of 68 degrees F. Results of all analyses and tests shall be reported at this gas temperature and pressure as applied to ground level or stack conditions. (Sec. 12 (19))

III. DUVAL AIR IMPROVEMENT AUTHORITY

A. Composition and Organization

The Authority consists of five members appointed by the Governor and confirmed by the Senate. One member shall be the state health officer or his designated representative, one shall be a Jacksonville city commissioner designated by the commission to supervise health and sanitation, one shall be a Duval county commissioner, one shall be a "discreet citizen" and one shall be an industry or business representative concerned with air pollution provisions. All members shall be residents and freeholder electors of the county and shall be appointed for four-year terms. Members shall receive no compensation but will be reimbursed for actual expenses involved in performing their duties. (Sec. 3.1, .2) (Sec. 6)

Before entering upon the duties of their office, members shall take, and file with the Secretary of State, the constitutional oath of office, and shall give a good and sufficient surety bond of ten thousand dollars payable to the Governor and his successors in office, conditioned upon the faithful performance of his duties. The Governor may suspend any member for misfeasance, malfeasance, gross inefficiency or misconduct, or upon any of the constitutional grounds upon which officers may be suspended by the Governor.

The members shall elect a chairman and a secretary and other officers they deem necessary. Three members constitute a quorum, but a majority vote of the entire membership shall be necessary to take any action. (Sec. 6)

The chairman may call Authority meetings as may three members by signing a written notice. The Authority may fix future meeting dates at any meeting. (Sec. 6)

B. Powers and Duties

The Authority shall have the following duties, rights, privileges and powers:

1. To adopt, revise, and amend appropriate rules reasonably necessary for the implementation and enforcement, administration and interpretation of the provisions of the act, and to provide

for the effective and continuing control and regulation of air pollution in the county and to provide for appropriate fees to be charged by the authority for the services rendered by it. It shall have its rules and regulations printed for distribution to any person upon request. (Sec. 7 (1) (2))

2. To administer and enforce the laws and rules relating to air improvement. (Sec. 7 (3))

3. To make continuing studies and periodic reports and recommendations for the improvement of air pollution control in the county, and to work in cooperation with the State Board of Health and other appropriate agencies and groups and to investigate and visit air pollution control programs and activities in operation in other areas and to make recommendations for the improvement of the regulation, administration and enforcement of air pollution control in the county; to publicize the importance of adequate pollution control, to hold public hearings, and to arrange programs for the presentation of information by experts in the field. (Sec. 7 (4) (5))

4. To enter into contracts with public agencies and private consultants to the extent necessary to accomplish the purposes of the laws and the duties imposed upon the Authority and to cooperate with and receive money from the federal government or any county or municipal government or from private sources for the study and control of air pollution. (Sec. 7 (6) (12))

5. To conduct investigations and hearings upon complaints and to take testimony on any matter under its jurisdiction and any member thereof may administer oaths. The Authority, through its secretary, shall have the power to issue subpoenas for witnesses and the production of documents and, by direction of the chairman of the Authority, compulsory process to compel the attendance of such persons and the production of evidence. The director may serve such subpoenas or compulsory process or cause the same to be served by any peace officer within the territorial area of Duval County. (Sec. 7 (7) (8) (9))

6. To employ such personnel and incur necessary expenses. (Sec. 7 (11))

7. To require the registration of persons engaged in operations which may result in air pollution and the filing of reports containing information relating to location, size and height of outlet, rate and period of emission and composition of effluent and other information as the Authority shall prescribe. (Sec. 8 (1))

8. To enter and inspect any building or place, except private residences, to investigate an actual or suspected source of air

pollution and ascertain compliance or noncompliance with its rules and regulations. (Sec. 8 (2))

9. To budget its operation expenses and to certify such budget to the Board of County Commissioners and the Budget Commission of Duval County prior to June first of each year commencing with the first day of July. The Budget Commission shall review such budget and approve it as they deem advisable. The Board of County Commissioners shall levy a tax annually on all taxable real and personal property in such county to produce the amount of the authorized budget. The tax collector shall remit all moneys collected, and the same shall be deposited in a bank or banks qualified as depositories of public funds, to be designated by the Authority. (Sec. 9 (a) (b) (c))

10. To purchase, lease or otherwise acquire land, buildings and personal property necessary to the efficient accomplishment of the purposes of law. The Authority may sell, lease, convey or trade any land, building, or personal property owned by it, when such property or properties are no longer needed. (Sec. 10 (1) (2))

11. Records and inventory.--A record and inventory of certain property owned by the district shall be maintained in accordance with Section 274-02, F. S. (Sec. 11)

12. Audit.--The Authority shall set up and maintain books and records under a method approved by the state auditing department and be subject to audit by same.

13. To issue annual financial reports of its operations and shall cause annual audits to be made of its operation and affairs by a certified public accountant who resides in Duval County, in such detail as may be necessary to show the financial operation and status of the Authority to be preserved as a public record. Said audits shall be made in accordance with the rules, regulations and forms prescribed by the State Auditor. A copy of each shall be furnished without charge to the Board of County Commissioners and the State Auditor, each of which shall acknowledge receipt thereof. (Sec. 23)

C. Jurisdictional Limit

1. The requirement for filing of reports shall be conditional upon either the consent of the person engaged in operations which may result in air pollution or the direction of the Authority which direction may be issued only after a hearing upon notice to the person engaged in such operation. (Sec. 8 (1))

2. The right to enter and inspect shall be conditional upon either the consent of the owner or lessee of the premises or the

direction of the Authority, which direction may be issued only after hearing upon notice to the owner or lessee of the premises. Before any entry and inspection is made, the person who is to make the same shall sign a statement in the presence of and witnessed by a notary public or other officer qualified to take acknowledgment, that all information shall be kept confidential except as it relates directly to air pollution. (Sec. 8 (2))

3. Records and inventory.--A record and inventory of certain property owned by the district shall be maintained in accordance with Section 274-02, F. S. (Sec. 11)

D. Contract Award

All construction, reconstruction, repairs or work of any nature made by the Authority, and all supplies, equipment, machinery and materials purchased by the Authority, amounting to more than $1,500.00, shall be let by contract to the lowest and best responsible bidder according to written specifications previously prescribed therefor after Jacksonville city general circulation daily newspaper publication once a week for at least two weeks of notice calling for such bids. The first publication is to be not less than ten days before the date for receiving bids. The Authority shall have the right to reject all bids and may readvertise for bids. No member of the Authority or officer or employee thereof shall directly or indirectly be a party to, or be in any manner interested in, any contract or agreement with the Authority for any matter, cause or thing in which such member, officer or employee shall have a financial interest or by reason whereof any liability or indebtedness shall be created against the Authority. If any contract or agreement shall be made in violation of the provisions of this section, the same shall be null and void and no action shall be maintained thereon against the Authority. (Sec. 24)

E. Execution of Instruments

All instruments in writing necessary to be signed by the Authority shall be executed by the chairman and director and authenticated by the Seal of the Authority. No expenditure of funds of the Authority other than for payroll labor, shall be made except by voucher approved by the Authority and signed by its chairman and director. The foregoing authority of the chairman may be exercised by the vice-chairman in the absence of the chairman and the foregoing authority of the director may be exercised by the secretary of the Authority or an acting secretary designated by the Authority in the absence of the secretary. The authority shall provide for the examination of all payrolls, bills and other claims and demands against the Authority to determine before the same are paid that they are duly authorized, in proper form, correctly computed, legally due and payable, and that the Authority has funds on hand to make payment. (Sec. 25)

IV. DIRECTOR

A. The director shall be appointed by the Authority and shall be a duly registered professional engineer qualified to practice in Florida with prior experience in the air pollution control field. He shall report directly to the Authority. (Sec. 14)

B. The director shall have the following duties and powers:

1. To enforce the provisions of the law and the rules and regulations of the Authority, and to investigate complaints, to study and observe air pollution conditions, and to make recommendations as to institution of action necessary to abate nuisances caused by air pollution and as to prosecutions for violations. (Sec. 15 (1) (4))

2. To establish, operate and maintain a continuing program for monitoring air pollution by means of county-wide air surveillance networks designed to provide accurate data and information as to whether the level of air pollution is increasing or decreasing throughout the county and to make appropriate surveys, tests and inspections to determine whether air pollution is being effectively controlled throughout the county, and to conduct tests in order to determine compliance with the law and the rules and regulations. The tests shall be conducted in accordance with recognized sampling and analysis procedure and good engineering practice. (Sec. 15 (9) (5) (15))

3. To maintain, review and supervise all operating records required to be filed by persons operating facilities and equipment subject to the provisions of the law, to make inspections of property, facilities, equipment and processes operating to determine whether the provisions are being complied with, and making recommendations for methods by which air pollution may be reduced or eliminated, and to render all possible assistance and technical advice to persons operating such equipment, facilities and processes, provided that he shall not design equipment or facilities for any person. (Sec. 15 (7) (6) (8))

4. To publish and disseminate information to the public concerning air pollution and recommendation of methods for decreasing and eliminating air pollution, and to enlist and encourage public support and cooperation of industrial and business enterprises and organizations. (Sec. 15 (10) (13))

5. To render all possible cooperation and assistance to federal, state and local agencies in accomplishment of the effective control of air pollution and to assist the State Board of Health in connection with the review of filed plans, specifications and processes. (Sec. 15 (12) (11))

6. To prepare a table of organization for staff members employed to assist him; determing and making recommendations as to the qualifications of such personnel and to prepare a detailed annual budget. (Sec. 15 (2) (3))

7. To make periodic reports concerning the status of air pollution in the county and enforcement of the provisions of the law and the rules and regulations and recommendations concerning the improvement of pollution control requirements to be filed with the chairman of the Duval Air Improvement Authority and made available to interested parties. (Sec. 15 (14))

8. Prohibitions against pollution.--It shall be unlawful for any person to cause, let, permit, suffer, or allow to be discharged into the atmosphere from any source of emission whatsoever any air pollutant which exceeds the limits for time, total quantities and concentrations as may be established by the rules and regulations of the Authority. (Sec. 15 (16))

V. PROCEDURE

A. Rules and Regulations

1. A majority vote of the entire membership is required to take any action. (Sec. 6)

2. It shall be unlawful for any person to cause, let, permit, suffer, or allow to be discharged into the atmosphere from any source of emission whatsoever any air pollutant which exceeds the limits for time, total quantities and concentrations as may be established by the rules and regulations of the Authority. (Sec. 16)

B. Complaints

All complaints made to the Authority regarding a violation of the law or rules and regulations adopted pursuant thereto, shall be made in a form prescribed by the Authority, however, this shall not limit the Authority's director in initiating complaints and issuance of notices. (Sec. 17 (1))

C. Hearings

1. After evidence has been obtained or received establishing a violation, the director shall issue a notice to correct or a citation to cease the violation, and shall cause the same to be served upon the violator by personal service, certified mail or by posting a copy in a conspicuous place on the premises of the facility causing the violation. The notice or citation shall state the general nature of the violation and specify a

reasonable time within which the violation shall be rectified or stopped. The notice shall be in triplicate, with the alleged violator, the director and the Authority secretary each receiving a copy. (Sec. 17 (2))

2. If a violation is not corrected within the specified time, the director shall proceed to initiate a hearing before the Authority. He shall file a written complaint with the Authority in which he is designated as the complainant and the accused violator is the respondent. As many persons may be joined in one proceeding as are alleged to have participated in the alleged violation. A copy of the complaint and a notice of hearing upon the respondent shall be issued by the director, either personally or by registered or certified mail, at least 20 days before the hearing date. Proof of service shall be filled with the Secretary and recorded in the minutes of the Authority. (Sec. 17 (3) (5))

3. The complaint shall be in writing and shall include but not be limited to the following: the name of the accused; his last known address; the number and the nature of the charges, which if true, would constitute one or more violations; a statement to inform the respondent that he may, but need not, be represented by counsel; that he is entitled to the issuance of subpoenas to compel the attendance of witnesses, the production of books, documents or other evidence relevant to the matter to be heard and that failure to appear may result in a default being entered and action taken according to the evidence before the Authority. All complaints, unless dismissed by the Authority shall be heard within a reasonable time after the date upon which they were preferred. The time and place of said hearing shall be fixed by the Authority. (Sec. 17 (4))

4. Hearings shall be held before the Authority but may be continued for good cause shown, from time to time, and in proper cases the Authority may allow the time deemed necessary to comply with the provisions of law or rules and regulations of the Authority. (Sec. 17 (8) (16))

5. The testimony of any material witness residing within or without the state may be taken by deposition in the manner and for the purposes provided by the Florida Rules of Civil Procedure. (Sec. 17 (7))

6. The director, the attorney for the Authority or duly authorized representative, shall present witnesses or other evidence to support the charges contained in the complaint. After the director shall have rested case, the respondent shall present his defense. The Authority shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of proceedings, but the determination shall be based upon sufficient legal evidence to sustain it. (Sec. 17 (8) (b) (c))

7. Every party to a hearing shall have the right to call and examine witnesses and to introduce documentary evidence relevant to the issues of the case. Oral evidence shall be taken only upon oath or affirmation administered by any member of the Authority. (Sec. 17 (8) (d) (e))

8. The proceedings of the hearing shall be reported stenographically and also recorded by machine recording equipment. (Sec. 17 (8) (f))

9. After the hearing, the Authority shall consider all the evidence offered and shall decide the issue based upon such evidence as soon as possible. If the decision is for the respondent, the Authority shall dismiss the proceeding and it shall be so stated in the order entered in the matter. If the Authority shall determine that the respondent is guilty of the charge and charges set forth in the complaint, it may institute action to compel compliance with provisions of such notice of citation issued by the director or initiate proceedings to prosecute the violator for violation of this act. Immediately upon the entry of the final order by the Authority, a copy thereof shall be delivered to the respondent and his counsel, if any, either personally or by registered or certified mail. (Sec. 17 (9) (a) (b) (c)), (Sec. 17 (10))

10. The records of the Authority shall reflect the action of the Authority upon the charges. (Sec. 17 (9) (d))

11. Rehearing. The Authority shall have the discretion to grant a rehearing, if applied for within thirty (30) days. However, for good cause, the time may be extended. (Sec. 17 (11))

D. Emergency Proceedings

In the event a violation creates an immediate health hazard or threatens immediate serious damage to public health, or threatens or causes irreparable damage to human, animal plant life or property, the Authority may apply to the Circuit Court for a temporary or permanent injunction to restrain and enjoin such offender from violating or continuing to violate the provision of the law; provided, however, no temporary injunction shall be issued without bond or without a hearing of which Respondent or Respondents has or have been given not less than four (4) days prior notice, and no temporary injunction shall be granted which shall limit or prevent operations of an industrial, manufacturing, processing or utility plant, unless at such hearing the Plaintiff shall establish by clear, certain, and convincing evidence that irreparable injuries will result to the public from the failure to grant the same. If any temporary injunction is improvidently or erroneously granted, suit may be instituted against the Authority or its sureties on the bond, but no judgment in excess of the amount of the bond may be awarded against the Authority. (Sec. 18)

E. Confidential Information

1. Any information obtained during inspection of any building or place shall be kept confidential except as it relates to air pollution. If samples are taken for analysis, they shall be taken in the presence of a representative of the company. A duplicate of the analytical report shall be furnished promptly to the person suspected of causing air pollution. (Sec. 8 (2))

2. Any information as to secret processes or method of manufacture or production shall not be disclosed in public hearings before the Authority but shall be described in the brief statement when appropriate. Such information shall be kept confidential by members of the Authority when so requested by the person submitting same. (Sec. 8 (3))

VI. INJUNCTIONS

In addition to the provided remedies and notwithstanding the existence of any adequate remedy at law, the Authority is authorized to make application for injunction to the Circuit Court of Duval County, and such court shall have jurisdiction upon a hearing and for cause shown to grant a permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or the rules and regulations of the Authority or from failing or refusing to comply with the requirements of this chapter. (Sec. 20)

VII. JUDICIAL REVIEW

Judicial review of decisions or orders of the Authority shall be in accordance with the Administrative Procedures Act, Chapter 120, Florida Statutes, or as otherwise provided by law. (Sec. 19)

VIII. VIOLATIONS AND PENALTIES

It shall be unlawful for any person to willfully fail or refuse to comply with an order of the Authority; and any person who shall willfully fail or refuse to comply with an order of the Authority shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished accordingly. Each day during which the willful failure or refusal to comply with such order continues shall constitute a separate offense. (Sec. 21)

IX. SCOPE AND CONSTRUCTION

That so long as this law shall remain in effect no air control district shall be created within Duval County under the provisions of Chapter 403, Florida Statutes. This act shall be liberally construed. (Sec. 22)

X. EFFECTIVE DATE

October 1965
Approved June 24, 1965

Florida--Continued

6. Sarasota County

I. AUTHORITY OF COUNTY COMMISSIONS

A. The Board of County Commissioners of Sarasota County is authorized to adopt an air pollution code to correct, remove or prevent air pollution in all its forms, including smoke, vapors, dust and wind borne matter originating within the area to which the code is applicable.

B. Code to be adopted after public hearing which shall be known as the Sarasota Air Pollution Control Code (§ 4).

II. APPLICABILITY OF CODE

A. Code is to apply to all areas in Sarasota County outside the corporate limits of any municipality (§ 1).

B. Any municipality may adopt the provisions of the act and thereafter its territory is included within the area to which the code is applicable (§ 2).

III. ADMINISTRATION

A. The Board may establish inspection fees to defray the costs of inspection and enforcement (§ 5).

B. An employee of the county may be designated to act as air pollution control inspector (§ 6).

IV. ENFORCEMENT

A. After adoption of code it is unlawful for any person to construct, reconstruct, alter, repair or use prohibited fuel and refuse burning plants, processes, equipment and devices without a permit (§ 8).

B. The Board may revoke any permit upon a determination that the activity for which the permit was issued is in violation or not in conformity with the Code (§ 8).

C. Violations of the Act or Code are declared to be misdemeanors (§ 11).

D. In addition to other remedies, the Board may institute any appropriate action in a court of record to enforce the Act, the Code or any order, requirement or decision pursuant thereto (§ 10).

E. Exempted from this Act are the burning or incineration of domestic waste, trees, stumps and brush accumulated as part of land clearing operations and any incineration for domestic purposes (§ 8).

F. An authorized representative of the Board may enter any premises or building except one- and two-family dwellings with the consent of the owner or occupant for the purpose of inspection or to prevent violation of the Act. Such representative is relieved of all personal liability for damage to persons or property as a result of any act required or permitted in the discharge of his official duties.

V. APPEALS

A. Any person aggrieved by administrative action taken under the Act or the Code may appeal to the Board for a hearing within 60 days of the action.

B. A notice of public hearing is to be published by the Board which may require the appellant to pay in advance the cost of publication of the notice. This payment will be refunded if the action complained of is not fully affirmed on appeal.

C. In hearing such appeals, the Board may obtain the testimony of expert witnesses and pay them witness fees.

D. After the hearing, the Board shall affirm, modify or reverse, in whole or in part, the action appealed from (§ 8).

VI. EFFECTIVE JUNE 17, 1959.

7. St. Lucie County [1]

I. GENERAL STATEMENT

It is prohibited to discharge or permit or allow discharge by any employee or agent into the air in St. Lucie County any smoke, vapor or gas in such quantity as is liable to affect the health of persons, birds, livestock, or vegetation, or damage property, or any noisome odors or noxious gases in such quantity as to create a nuisance (§ 2).

II. ADMINISTRATIVE ORGANIZATION

The Board of Commissioners of St. Lucie County and the State Board of Health, by injunction or other legal means, enforce both the Act and any rules, regulations, or criteria established by the State Board of Health to control air pollution (§ 3).

III. PENALTIES

Violation of this Act is a misdemeanor; conviction thereof in a court of competent jurisdiction may result in a fine of not more than $500, and each day of violation constitutes a separate offense (§ 4).

IV. MISCELLANEOUS

The Act is subject to approval by referendum (§ 7).

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[1] Citations refer to sections in Chapter 31238, Acts of 1955.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Georgia

1. Air Pollution Control 1/

The Department of Public Health and county boards of health are empowered to conduct studies and research to determine factors responsible for air pollution; to determine physiological effects of air pollutants on health and safety; and to render advice and make recommendations in connection with the foregoing. The Department of Public Health may develop and publish recommended standards of quality for air which reflect relationship between intensity and composition of air pollution and health and disease and determine the maximum allowance standards of emission of exhaust contaminants from all sources consistent with the public health and safety. (Sec. 88-901, added by Sec. 1, House Bill 162, Act 936, Laws of 1964).

2. Nuisance Provisions 2/

Any nuisance which is manifestly injurious to the public health may be abated by the order of any two or more justices of the peace of a county founded upon the verdict of twelve freeholders of the same county. The order is directed to and served by the sheriff of the county (§ 72-201).

A person who, after notice to abate, erects or continues such a nuisance is guilty of a misdemeanor (§ 72-9901).

1/ Citations refer to Georgia Health Code, Title 88.

2/ Citations refer to Code of Georgia Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Guam 1/

The Division of Public Health and Sanitation of the Department of Medical Services under the Director of Medical Services is responsible for inspecting public and private buildings, vehicles, aircraft, ships, and other places, except homes, at reasonable hours (§§ 9500.1.5). The Director may order immediate abatement of a public nuisance, which is defined as "anything which is dangerous to life, injurious to health, or renders . . . air . . . impure or unwholesome." (§§ 9500.5, .50 (e)).

Maintaining or committing a public nuisance on public or private property or omitting to perform a legal duty to remove one is punishable by up to six months in jail or a fine of $500 or both, as is maintaining or permitting a public nuisance to exist on owned property or, upon ten days written notice to abate, upon leased or occupied property (§§ 9500.6, .7,.14). After ten days written notice to abate to an owner, the Director may order abatement and levy the cost thereof in the same manner as real estate taxes, and such abatement is performed by the Director of Public Works under the protection of the Director of Public Safety (§§ 9500.8,.9). Complaints alleging public nuisance are investigated and violators may be arrested (§§ 9500.11,.12).

The destroying or attempting to destroy by burning of garbage, dead animals, or other offensive substances the burning of which may give off foul and noisome odors in or within one-quarter mile of Agana, any village, or any other urban area, except in an approved type of incinerator or as otherwise authorized, is prohibited (§ 9660.7).

1/ Citations refer to sections in The Government Code of the Territory of Guam, 1961 Revision.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Hawaii [1/]

1. Air Pollution Control Act

I. GENERAL STATEMENT

The "Air Pollution Control Act" of 1957 establishes a State-wide program of air pollution control under the Board of Health. The Board is authorized to designate specific areas for air pollution control measures (§ 5) and to organize county advisory air pollution control associations (§ 9). Such associations are to advise the Board of county air pollution problems (§ 10) and to discuss and report to the Board on proposed regulations of local application which the Board proposes to adopt (§ 11).

"Air pollution" is defined as "the presence in the outdoor atmosphere of substances in quantities which are injurious to human, plant or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property throughout the State and in such areas of the State as shall be affected thereby." Hazards incident to the employer-employee relationship are excluded. "Substances" include smoke, fumes, odors, gases, solids, particulate matter, etc., or any combination (§ 3).

II. ADMINISTRATIVE ORGANIZATION

A. ENFORCEMENT AGENCY

The Board of Health is directed to "control" air pollution in accordance with rules and regulations promulgated by it (§ 6) ("control" is defined as including prohibition (§ 3)). Such rules and regulations may designate specific areas for the control of air pollution (§ 5).

B. DUTIES AND POWERS

1. Administrative

The Board is authorized to:

a. Establish an air pollution control section, hire employees and assign duties;

b. Conduct and supervise research programs on causes, effects and hazards of air pollution;

[1/] Citations refer to Act. 60, S.L. 1957. The Act is codified in Title 47, 1960 Supplement to Revised Laws of Hawaii, Sections 47-60 to 47-79.

c. Conduct and supervise program of air pollution control education and prepare and distribute information on the subject;

d. Appoint masters to conduct hearings and investigations under § 7-27 R.L. Hawaii 1955;

e. With the approval of the governor, cooperate with and receive money from the Federal government, or any political subdivision of the State, or from private sources for the study and control of air pollution (§ 6 a-c, g, h);

f. Organize county advisory air pollution control associations as it may determine. Members serve without compensation at the pleasure of the Board and are entitled to necessary expenses incurred. A Board employee acts as secretary (§ 9).

2. Enforcement

a. Permits - The Board is authorized to require all persons and governmental agencies engaged or desiring to engage in operations which may result in air pollution to secure a permit prior to installation, or operation, or continued operation after the effective date of the act. The permit will be granted only if operations comply with regulations. The Board may require the filing of plans and reports by such persons, dealing with the installation and its operation (§ 6 d).

b. Inspection - The Board has the authority to enter and inspect, during reasonable hours, any building or place (except a building designed and used exclusively as a private residence) for the purpose of determining compliance with regulations and to make reasonable tests. Confidential information obtained by employees within the scope of employment shall be disclosed only in connection with official duties as it relates to air pollution (§ 6 e). Any disclosure not authorized by the act is a misdemeanor punishable by fine up to $1000. The employee is also liable in damages to any person injured by the disclosure (§ 8).

c. Adoption of regulations - All regulations of strictly local application must be submitted to the appropriate county air pollution association (if there is one) for discussion and report (§ 10).

d. Fees - A fee schedule may be established by the Board to cover the cost of issuing permits and making the necessary inspections, which fees shall be paid by all applicants. The fees are appropriated to the Board for the expenses of the program (§ 7).

III. PROCEDURES

A. INVESTIGATION OF VIOLATIONS

Upon written complaint, or when the Board has cause to believe there is a violation, an investigation shall be made. If the Board finds a violation exists, the Board shall endeavor to correct it by conference, conciliation and persuasion (§ 12).

B. HEARING

1. If voluntary correction cannot be obtained within a reasonable time, a written notice of hearing before the Board, or a master or masters, together with a copy of the complaint, is to be served (§ 13).

2. The respondent may file a written answer and may appear at the hearing, with or without counsel and submit testimony. The testimony shall be under oath and stenographically recorded, and the parties are not bound by technical rules of evidence (§ 14).

3. Three or more members of the Board, designated by the president, must sit at a board hearing. Trade secrets are not to be disclosed in public hearing before the Board so far as practicable and shall be kept confidential. At the request of respondent the Board shall subpoena witnesses and require the production of records (§ 15).

C. ORDERS AND THEIR ENFORCEMENT

1. Issuance: After the hearing, if the Board determines the respondent is in violation, it enters an order accordingly and sets a reasonable time for taking required corrective measures and requires periodic progress reports. Secret processes, etc., revealed by such reports are to be kept confidential (§ 16).

2. Injunctive relief: If the order is not complied with, the Board may seek injunctive relief in any court of competent jurisdiction (§ 17).

3. Judicial review: Any person aggrieved by the decision of the

Board may appeal to a circuit judge within twenty days after the decision is rendered, and obtain a de novo hearing. A notice of appeal is filed with the Board, which must forward the notice, together with a certified copy of the hearing, to the clerk of the circuit court to which the appeal is to be taken (§ 19).

IV. PENALTIES

A. If corrective action is not taken within nine days of the time set in the order of the Board, any private person or agency shall be liable to a penalty of $100 for each seven-day period or fraction thereof that the violation continues beyond such ninth day. The Board may institute legal proceedings in the name of the State to recover the penalty (§ 18).

B. Any person who interferes with or obstructs an employee conducting an inspection is guilty of a misdemeanor and subject to a fine of not more than $500 (§25).

V. MISCELLANEOUS

A. Technical defects shall not invalidate any rule or regulation of the Board, and they shall not be subject to judicial review or their enforcement restrained except in connection with an appeal under § 19 of the act (§ 20).

B. When an appeal is taken, any action for enforcement or prosecution for violation may be stayed by the judge having jurisdiction until the determination of the appeal (§ 20).

C. Officers or employees shall not be criminally liable for actions in the performance of their duties (§ 21).

D. County ordinances and regulations not inconsistent with this act or regulations thereunder shall continue in effect. Counties may adopt regulations and ordinances not inconsistent with this act controlling air pollution throughout the county or in affected areas and establishing county control agencies. Counties may contract with each other and with State for sharing of services and for technical assistance and training. Inconsistent county ordinances and regulations declared invalid (§ 47-77 as amended, Act 72, Laws 1965, Approved May 11, 1965).

Effective date - May 6, 1957.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Idaho 1/

1. Air Pollution Control Act

I. GENERAL STATEMENT

The "Idaho Air Pollution Control Act (1959)" established a State-wide program for the prevention and abatement of air pollution, established an Air Pollution Control Commission in the State Board of Health, stated its authority and procedure, designated the State Board of Health as the policing agency, authorized programs of research and education and provided for judicial review.

Air pollution is defined in the Act as "the presence in the outdoor atmosphere of substances put there by man in concentration sufficient to cause an unreasonable interference with human, plant or animal life, or the reasonable use of property." All aspects of employer-employee relationships as to health and safety hazards are excluded from the definition (§ 39-2902).

II. ADMINISTRATIVE ORGANIZATION

A. ORGANIZATION

An Air Pollution Control Commission is established in the State Board of Health consisting of nine Idaho residents appointed by the Governor as follows:

1. The Administrator of Health or his designate from within his department;
2. The designate of the Commissioner of Agriculture;
3. A member of the faculty of the University of Idaho designated by the University President;
4. The designate of the Idaho Municipal League;
5. A representative of the labor unions designated by the Governor;
6. The designate of the Idaho Mining Association;
7. The designate of the Idaho Forest Products Industry;

1/ Citations refer to Idaho Code and Cumulative Pocket Supplement.

8. The designate of the Idaho Chemical Industry;

9. A member of the public appointed by the Governor.

They shall serve overlapping four-year terms (§ 39-2904) and serve without compensation although they shall be reimbursed for expenses incurred (§ 39-2905). The members shall annually elect a chairman. Five members constitute a quorum for the transaction of all business (§ 39-2906. See also III D below).

B. POWERS OF THE COMMISSION

The Commission has the following powers (§ 39-2908):

1. To conduct and supervise research programs relating to air pollution;

2. To conduct and supervise Statewide programs of air pollution control education;

3. To cooperate with and receive money from the Federal government, from county or municipal governments, and with approval of the Governor, from any other public or private source;

4. To develop a comprehensive program for the prevention and control of air pollution in the State;

5. To advise and consult with other interested groups, Federal, State, local and private, in the furtherance of the purposes of the Act;

6. To adopt, amend and repeal rules and regulations to control and prohibit air pollution throughout the State or in affected areas of the State. A public hearing on any such proposed action is to be held after 30 days' notice by publication. Any member of the public may present evidence. Persons heard at the hearing must be given written notice of the determination of the Commission. No rule, regulation or amendment or repeal thereof, shall be effective until 60 days after adoption by the Commission.

7. After the adoption of rules and regulations, to initiate and to receive complaints of air pollution, to hold hearings on the same and enter orders to diminish and abate air pollution and to enforce its rules and regulations; and to institute legal proceedings, including suits for injunctions for the enforcement of its orders, rules and regulations and to prevent air pollution and enforce penalties.

8. To organize county air pollution divisions in each county in which it shall be advisable to study air pollution problems locally (§§ 39-2912 and 39-2913). All rules and regulations of local application may be submitted to such divisions for study and report (§ 39-2914). Such divisions shall be composed of residents of the county appointed by the Commission without compensation;

9. To employ necessary personnel (§ 39-2907).

C. POWERS OF THE BOARD OF HEALTH

The Board has the authority (§ 39-2910):

1. To cooperate with the Commission in conducting and supervising research and education.

2. To cooperate with the Commission in requiring the registration of persons engaged in operations that may result in air pollution, and, on direction of the Commission, after a hearing with the person involved, to require the filing by such persons of reports relative to air pollution including location, height of outlet, composition of effluent etc.

3. To police air pollution in accordance with rules and regulations adopted by the Commission.

4. To enter and inspect any place, except private residences, both to investigate sources of air pollution and to ascertain compliance with rules and regulations of the Commission. Prior to such inspection, the inspector must sign a statement before a notary public that all information gained by such inspection must be kept confidential except as it relates to air pollution. Copies of analytical reports on samples taken shall be promptly furnished to persons suspected of causing pollution.

5. To initiate, receive and file complaints with the Commission.

III. PROCEDURES

A. On receipt of a written complaint, or if the Board of Health has reason to believe that any person is violating any rule or regulation of the Commission, the Board shall cause an investigation of the situation to be made, and if it finds that such violation exists it shall endeavor, by conference, conciliation and persuasion, to eliminate any source or cause of air pollution (§ 39-2915).

B. If the above efforts fail in a reasonable time to correct the situation the Board shall file a written complaint with the Commission and cause a copy of it, together with a notice of time and place of hearing, to be served on the persons complained against (§ 39-2916). Such persons may file a written answer to the charges, may appear and submit evidence, or both (§ 39-2917).

C. Testimony at the hearing will be under oath and recorded stenographically, but the strict rules of evidence in courts of law shall not apply. Copies of the transcript shall be available to respondents on their request and at their expense (§ 39-2917).

D. All hearings by the Commission shall be held before three or more members designated by the chairman. Any member of the Commission shall have the authority to subpoena witnesses and papers and administer oaths. On request of respondents the Commission shall subpoena witnesses and papers relating to the matter under inquiry. The affirmative vote of at least five members of the Commission is necessary to enter any order or to adopt any rule or regulation. Information as to secret processes or methods shall not be disclosed in public hearing insofar as practicable and shall be kept confidential (§ 39-2911).

E. After the hearing if the Commission determines that the person complained against is violating any rule or regulation it shall fix a reasonable time for him to take measures to correct the situation and shall require periodic progress reports. Information in such reports as to secret processes or methods of operation shall be kept confidential (§ 39-2918).

F. Persons found by the Commission to have violated any rule or regulation shall be liable for a penalty of $500 per week, commencing the 10th day after the time fixed for the taking of preventive or corrective measures. The penalty may be collected in a civil action in the District Court in the county where the pollution originates. All penalties collected are paid into the county common school fund (§ 39-2919).

G. If corrective measures ordered by the Commission are not taken, the Commission may institute a civil action for injunctive relief to prevent further violation or fules and regulations (§ 39-2919).

H. 1. Any person whose interest is substantially affected by the adoption or repeal of any rule or regulation, including orders establishing or dissolving county air pollution control divisions, may have such action reviewed by the District Court exercising jurisdiction over the major portion of the area where the affected property lies or the county air pollution control division is located, by filing notice of appeal with the Secretary of the Commission within 30 days of the Commission's action.

2. Within 20 days of receipt of the notice of appeal the Secretary of the Commission shall certify and furnish the appellant a copy of transcript of the proceedings of the Commission and a copy of the order or decision appealed from.

3. If the appellant files these documents within 30 days from the filing of the notice of appeal with the proper District Court, such court has complete jurisdiction over the matter. The proceedings in the court are by trial de novo.

4. Thereafter a final order of the District Court may be appealed to the Supreme Court.

5. These provisions shall not displace any other appropriate method of testing the validity of any action of the Commission.

IV. SCOPE AND CONSTRUCTION

A. Neither this Act nor rules and regulations adopted pursuant to it affect ordinances or regulations issued by any municipality, county or board of health, or the right of such agencies to adopt ordinances or regulations not inconsistent with the Act and rules and regulations thereunder (§ 39-2922).

B. Existing civil and criminal remedies for acts which may be a violation of a rule or regulation of the Commission are preserved and functions vested in the Board of Health by other acts are not affected (§ 39-2921).

C. The Commission, Board, County Air Pollution Control Divisions and courts in making rules and regulations and in enforcing the provisions of this Act shall take into consideration all facts bearing on the reasonableness of the activity involved and the regulations proposed to control it (§ 39-2909) including:

1. The harm caused or threatened to be caused (§ 39-2909 (a)).

2. The social and economic value of the activity involved (§ 39-2909 (b)).

3. Its suitability to the area in which located (§ 39-2909 (c)).

Idaho--Continued

4. The scientific and economic practicability of abating the pollution (§ 39-2909 (d)).

5. The exercise of a wide discretion in weighing the equitities involved and the advantages and disadvantages to the residents of the area and lawful business therein of requiring compliance with specific requirements of rules and regulations.

2. Tax Exemption

Facilities, installations, machinery or equipment used to control air pollution are exempt from taxation, but when used for other beneficial purposes only the portion of the assessed valuation thereof which the State Tax Commission determines can be reasonably calculated to be necessary for and devoted to pollution control and which have no value as the specific source of marketable by-products is exempt (§ 63-105T, S. Bill No. 217, Reg. Session 1963, approved March 25, 1963).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Illinois 1/

1. State Laboratories

The Department of Public Health has power to maintain physical, chemical, bacteriological and biological laboratories to make examinations of atmosphere and equipment and processes relating thereto and to make such diagnostic tests for the evaluation of health hazards necessary for the protection of the people of the State (Ch. 127, § 55 (6)).

2. Cities

For the purpose of lessening or preventing the discharge of air contaminants, the corporate authorities of a city, village or incorporated town may prescribe by ordinance for the regulation of (1) the design and installation of equipment of buildings and uses of land connected with air contamination, (2) the operation or use of equipment and appliances emitting air contaminants, (3) the conduct of uses of land causing emission of air contaminants and (4) the abatement of an operation, activity or use causing air contamination.

"Air contaminant" as defined "means and includes but is not limited to the following: dust, soot, mist, smoke fumes, fly ash, vapor, corrosive gas or other discharge, and any other air-borne material or substance that is offensive, nauseous, irritating or noxious to humans or other animal life" (Sec. 11-19-11 of Illinois Municipal Code as added by H.B. 348, approved August 25, 1961).

1/ Citations refer to Smith-Hurd Illinois Annotated Statutes Cumulative Annual Pocket Part.

3. Counties

For the purpose of lessening or preventing the discharge of air contaminants, counties may prescribe by ordinance for the regulation of (1) the design and installation of equipment of buildings and uses of land connected with air contamination, (2) the operation or use of equipment and appliances emitting air contaminants, (3) the conduct of uses of land causing emission of air contaminants and (4) the abatement of an operation activity or use causing air contamination.

"Air contaminant" as defined "means and includes but is not limited to the following: dust, soot, mist, smoke fumes, fly ash, vapor, corrosive gas or other discharge, and any other air-borne material or substance that is offensive, nauseous, irritating or noxious to humans or other animal life" (Title 34, section 421.2 Smith-Hurd Illinois Annotated Statutes 1961 Cumulative Annual Pocket Part).

4. Illinois Air Pollution Control Act [1]

I. GENERAL STATEMENT

It is the intent of this Act to maintain a purity of the air resources of the State consistent with the protection of the normal health, general welfare and physical property of the people, maximum employment and the full industrial development of the State. The discharge into the outdoor atmosphere of air contaminants so as to cause air pollution and create a public nuisance is contrary to the public policy of the State of Illinois and in violation of this Act (Secs. 3, 5).

II. DEFINITIONS

A. "'Air contaminant' is particulate matter, dust, fumes, gas, mist, smoke, or vapor, or any combination thereof" (Sec. 2 (a)).

B. "'Air pollution' is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life or to property, or which unreasonably interfere with the enjoyment of life and property" (Sec. 2 (c)).

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[1] Citations refer to S. B. No. 732, approved August 19, 1963.

III. AIR POLLUTION CONTROL BOARD OF THE STATE OF ILLINOIS

A. COMPOSITION AND ORGANIZATION

The nine members of the Board shall be the Director of the Illinois Department of Health, ex officio, and eight unpaid members appointed by the Governor with the advice and consent of the Senate and removable by him. Of the eight appointees, one shall be a professional engineer with at least five years experience in air pollution control; one shall be a physician experienced in industrial medicine; one shall be in a field directly related to agriculture or conservation; one shall be a manager of a private manufacturing concern; one shall be engaged in municipal government; one shall be representative of labor; and two others shall be selected at large. The members shall serve overlapping four-year terms.

The Board shall meet at least four times a year, but special meetings may be called by the chairman or any three members. Five members shall constitute a quorum. A chairman and vice-chairman shall be elected annually from the membership, and the Chief Sanitary Engineer of the Illinois Department of Public Health shall serve as Technical Secretary to the Board (Sec. 4).

B. POWERS AND DUTIES

1. Powers

The Board is empowered to:

a. Prepare and develop a general comprehensive plan for the control of air pollution, recognizing varying requirements of different parts of the State (Sec. 5 (A)(1));

b. Adopt and promulgate rules and regulations, including regulation of the installation of new equipment capable of becoming a source of air pollution (Sec. 5 (A)(2)). Rules and regulations may differ as between different types and conditions of air pollution, as between particular air contamination sources, and as between particular areas of the State. In establishing such differences, the Board shall take into consideration such factors as existing physical conditions, zoning classifications, topography, prevailing wind directions and velocities, and the fact that rules proper as to an essentially residential area of the State may not be proper as to a highly developed industrial area (Sec. 7);

c. Hold hearings upon complaints or petitions for variance or exception, or upon appeals from denial of the Technical Secretary of installation permits, and in connection therewith issue subpoenas requiring the attendance of witnesses and the production of evidence (Sec. 5 (A)(3));

d. Enter such order or determination, including an order to abate, as may be necessary to effectuate the purposes of the Act. In making such order or determination, the Board shall take into account all facts bearing on the reasonableness of the emissions involved including:

(d-1) character and degree of injury to health, general welfare and physical property;

(d-2) social and economic value of the air pollution source;

(d-3) relative suitability of the air pollution source to the area, including the question of priority of location in the area involved; and

(d-4) technical practicability and economic reasonableness of controlling the emissions from such source.

The order or determination of the Board may include such advisory recommendations as the Board may deem appropriate (Sec. 5 (A)(4));

e. Cause legal proceedings to be instituted in a court of competent jurisdiction to compel compliance with any order or determination (Sec. 5 (A)(5));

f. Enter at all reasonable times in or upon any private or public property except private residences to investigate and inspect suspected air pollution sources (Sec. 5 (A)(6));

g. Request and receive necessary assistance from other State agencies (Sec. 5 (A)(7)); and

h. Employ needed consultants and technical assistants (Sec. 5 (A)(8)).

2. Duties

The Board shall have the following duties:

a. To encourage voluntary cooperation by affected persons and groups in obtaining a reasonable degree of air purity in the State (Sec. 5 (B)(1));

b. To encourage authorized air pollution agencies of political subdivisions to handle their respective problems to the greatest extent possible and provide technical assistance to those subdivisions requesting it (Sec. 5 (B) (2));

c. To encourage and conduct studies and research (Sec. 5 (B) (3));

d. To collect and disseminate information (Sec. 5 (B)(4));

e. To represent the State in all arrangements for interstate air pollution compacts (Sec. 5 (B)(6));

f. To provide such technical, scientific or other services as may be required to carry out the provisions of this act (Sec. 5 (B)(7)); and

g. To cooperate with other interested agencies (including the Federal government), groups or persons, and to accept and administer all grants or other funds given for the purposes of carrying out any of the functions of this Act (Sec. 5 (B)(5) and (8)).

IV. TECHNICAL SECRETARY

The Technical Secretary:

A. Or his representative, shall attend all Board meetings but shall not vote (Sec. 6 (a));

B. Or his authorized representative, as the Board may require, shall handle correspondence, conduct inspections and investigations, and prepare reports and data during the interim between its meetings (Sec. 6 (b));

C. Shall exercise general supervision over all Board employees, and shall investigate complaints, recommend to the Board the issuance of formal complaints and prosecute such complaints before the Board (Sec. 6 (c)); and

D. Shall have power to grant permits for the installation of new equipment capable of becoming a source of air pollution, subject to rules and regulations of the Board defining the classes and types of equipment subject to such permit requirement. Upon his refusal to grant an installation permit, any person requesting such permit shall be entitled to a hearing before the Board (Sec. 6 (d)).

V. PROCEDURES

A. HEARINGS

1. All hearings shall be before at least three members of the Board (Sec. 10 (c)).

2. Any member of the Board may issue notices of hearings requesting the attendance and testimony of witnesses and the production of relevant evidence, and may examine such witnesses (Sec. 10 (b)).

3. At public hearing, all testimony shall be under oath and recorded stenographically. A copy of the transcript shall be made available to any person upon payment of the usual charges (Sec. 10 (a)).

4. No information relating to secret processes or methods of manufacture shall be disclosed at any hearing and all such information shall be kept confidential (Sec. 10 (d)).

B. RULES AND REGULATIONS

1. Approval in writing of at least six members of the Board shall be necessary for the adoption, amendment or repeal of a rule or regulation.

2. Before a rule may be adopted, amended or repealed, there must be a public hearing on thirty days notice within the area of the State concerned. Opportunity to be heard by the Board shall be given any interested person, and any person heard or represented at such hearing shall be informed in writing of the Board's action. Upon request of a member of the Board, opportunity shall be given interested persons to examine any witness testifying.

3. No Board action relative to a rule or regulation shall become effective until a certified copy has been filed with the Secretary of State (Sec. 7 (a)).

C. ENFORCEMENT

1. Upon request of the Board or receipt of information concerning an alleged violation of this Act or any rule or regulation promulgated hereunder, or if he shall deem advisable, the Technical Secretary shall cause investigations to be made. If, in his

opinion, such investigations disclose a violation, he shall endeavor to eliminate such violation through conference, conciliation and persuasion (Secs. 9 (a) and (b)).

2. If conference, conciliation and persuasion fail and the Technical Secretary files a formal complaint with the Board, the Board may have issued and served a written notice and a copy of the formal complaint which specifies both the provision allegedly violated and the manner and extent of such violation. A person so complained against must answer the charges at a hearing before the Board at least 30 days after the date of the written notice (Sec. 9 (b)).

3. The respondent may file a written answer to the complaint and may appear at the hearing in person or by representative, with or without counsel. He may make oral argument, offer testimony or cross-examine opposing witnesses. The Technical Secretary shall subpoena such witnesses as the respondent may reasonably designate and shall require the production of such written evidence as reasonably relates to the matter under investigation (Sec. 9 (c)).

4. Upon due consideration of the record or upon respondent's default in appearing, the Board shall issue its determination or final order, upon approval, in writing, by at least five members, and shall immediately notify the respondent thereof by registered mail (Sec. 9 (d)).

5. In all proceedings with respect to alleged violations, the burden of proof shall be on the Technical Secretary (Sec. 9 (d)).

D. VARIANCES

1. Variances, for periods of up to one year, may be granted by the Board if it is determined that strict compliance with a provision or Board order will result in an arbitrary and unreasonable taking of property or in the practical closing of any lawful business or activity, and is without corresponding public benefit. In determining the conditions and extent of variance the Board shall recognize progress made in eliminating air pollution, considering the reasonableness of conditioning the variance upon partial abatement over an established reasonable period or of conditioning it upon other requirements. Any variance may be conditioned upon periodic reports on the progress of compliance (Secs. 11 (a), (b), and (c)).

2. A person seeking a variance shall petition the Technical Secretary to that effect. The Secretary shall investigate such petition and recommend action on it to the Board. If the recommendation is favorable, the Board may grant the variance without hearing; if it is not, or if the Board determines that a hearing would be desirable, a hearing similar to that specified in the section on enforcement, above, shall be held, but the burden of proof shall be on the petitioner (Sec. 11 (d)).

VI. FAILURE TO ACT

If the Technical Secretary fails to take action within 60 days after a request for installation permit, petition for variance, or certificate of exemption, or if the Board fails to enter a final order or determination within 60 days after the final argument in an enforcement hearing, the person involved shall be entitled to consider such failure a grant of the requested permit, variance or exemption, or a finding favorable to the respondent in an enforcement hearing (Sec. 12 (a)).

VII. PENALTIES

If its final order and determination, not then subject of judicial review, is being violated, the Board may cause the Attorney General to institute a civil action in any court of competent jurisdiction for injuctive relief or for the assessment of a penalty not to exceed $200 for each day of continued violation, or both, as the court may deem proper (Sec. 15).

VIII. APPEALS

A. The validity of any rule or regulation may be determined upon petition for declaratory judgment addressed to the Circuit Court of the county in which petitioner resides if such rule or its threatened application impairs or threatens to impair his legal rights or privileges, after the Board has had a reasonable chance to pass upon its validity and application to petitioner (Sec. 8).

B. All final orders and determinations of the Board hereunder shall also be subject to judicial review pursuant to the provisions of the "Administrative Review Act", as amended, and the rules adopted pursuant thereto (Sec. 13).

IX. SCOPE AND CONSTRUCTION

A. EXEMPTION

1. This Act shall not apply in any political subdivision which

provides for the control of air pollution in a manner not inconsistent with the provisions of this Act or rules adopted hereunder (Sec. 14 (a)).

2. A certificate of exemption, issued and revocable by the Board, shall attest to such non-application, and shall be available for inspection in the office of the county or municipal clerk, as the case may be (Sec. 14 (a)).

3. Any political subdivision desiring a certificate of exemption shall petition the Technical Secretary of the Board, and a procedure identical to that for application for a variance, outlined above, shall be followed in determining the granting or non-granting of such certificate (Sec. 14 (c)).

B. The Board has no jurisdiction over air pollution existing solely within commercial and industrial plants or to affect employer-employee relations relating to a condition of air pollution (Sec. 5 (c)).

C. No existing civil or criminal remedy for a wrongful action which is a violation of any part of this law or any rule or regulation promulgated hereunder shall be impaired by this Act (Sec. 16).

D. If any part of this Act is judged unconstitutional, such judgment shall not affect the validity of the Act as a whole or of any other part thereof (Sec. 19).

X. NORTHEASTERN ILLINOIS METROPOLITAN AREA AIR POLLUTION CONTROL BOARD

A. "An Act creating the N.I.M.A.A.P.C.B., and prescribing its powers and duties," approved August 25, 1961, is repealed (Sec. 18).

B. All materials, records and other resources and equipment of the N.I.M.A.A.P.C.B. shall be transferred to the Board as of the effective date of this Act (Sec. 17).

XI. EFFECTIVE DATE

Effective upon approval, August 19, 1963.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Indiana [1]

1. Air Pollution Control Commission

I. GENERAL STATEMENT

A. SUMMARY

The 1961 Air Pollution Control Act established an Air Pollution Control Board as an independent enforcement agency and vested in the State Board of Health the power and authority to conduct studies, investigations and research, render technical assistance, etc. (See Item II B below).

It is declared to be the intent and purpose of the Act to seek to achieve such a reasonable degree of air purity consistent with maximum employment and full industrial development as shall be technically feasible, economically reasonable and necessary for the protection of normal health, the general welfare and the property and people of the State (Sec. 2). The discharge of air contaminants so as to "cause air pollution and create a public nuisance" is declared to be contrary to the public policy of the State and the provisions of the Act (Sec. 5).

The declared intention of the Act is that primary responsibility for the control of the emission of air contaminants into the atmosphere shall rest with the responsible local governmental agency (See Item II A below).

B. DEFINITIONS

"Air pollution" is defined as the "presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, or to property, or which unreasonably interferes with the comfortable enjoyment of life and property" (Sec. 2 (c)).

"Air contaminant" means "dust, fumes, gas, mist, smoke or vapor, or any combination thereof" (Sec. 2 (d)).

"Air contaminant source" is broadly defined as "any and all sources of emission of air contaminants, whether privately or publicly owned or operated" and includes, among other examples specifically listed, motor vehicles, railroad locomotives, ships and boats (Sec. 2 (e)).

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[1] Citations refer to Ch. 171, Indiana Laws of 1961 (Regular Session), approved March 8, 1961. This Act is codified in Title 35, Chapter 46 of Burnes Indiana Statutes, Annotated, 1962 Cumulative Pocket Part.

II. ADMINISTRATIVE ORGANIZATION

A. ENFORCEMENT AGENCY--ADJUDICATORY FUNCTIONS

1. Membership

Enforcement is vested in the 7-member Air Pollution Control Board of the State of Indiana (Sec. 4), which is created as an administrative board (Sec. 3). The Secretary of the State Board of Health is an ex-officio member. The six other members, appointed by the governor for four-year terms and removable by him for cause, are a licensed physician, a registered graduate engineer, and a representative of agriculture, of industry, of municipal government and of the general public. Provision is made for filling vacancies and for payment of per diem and mileage of the appointed members (Sec. 3).

2. Organization and staff

The board elects a chairman and vice chairman annually at the first meeting in each calendar year, and is required to hold at least two regular meetings a year. A registered sanitary engineer is to be appointed by the Secretary of State Board of Health from his staff to serve as technical secretary of the Board, to handle correspondence, investigations, and prepare reports and data between meetings as the Board may direct. Provision is made for special meetings at call of the chairman or two members (Sec. 3).

3. Duties and powers (Sec. 4 A)

The Board is authorized to:

a. Make investigations, consider complaints, and hold hearings;

b. Enter necessary orders and require action to abate air pollution, taking into consideration (1) the character and degree of injury to, or interference with, comfort, safety, health, use and enjoyment of property, (2) the social and economic value of the activity, and (3) the scientific and economic practicability of remedial action, and may also make appropriate advisory recommendations;

c. Adopt rules and regulations consistent with the purpose of the statute (see Item I above); and

d. Enforce its orders as provided under applicable State law.

B. INVESTIGATIVE, RESEARCH AND COOPERATIVE FUNCTIONS (Sec. 4 B)

The State Board of Health is authorized to:

1. Advise and consult with public and private groups, other States, and the Federal government in the prevention and control of air contamination sources;
2. Conduct studies and research relating to causes, effects, prevention, and control of air pollution;
3. Collect and disseminate information;
4. Encourage voluntary cooperation by public and private groups in obtaining a reasonable degree of air purity;
5. Encourage authorized local air pollution control agencies to handle their own problems, and on request, provide technical assistance to local governments;
6. Represent the State in development of interstate air pollution control compacts;
7. Accept and administer grants and gifts;
8. Enter and inspect at reasonable times all public and private property except private residences;
9. Investigate complaints, make reports as it deems advisable to Control Board, and participate on behalf of the State in Control Board proceedings; and
10. Budget and receive appropriations for carrying out the statute.

III. ENFORCEMENT PROCEDURES

A. JURISDICTION (Sec. 5)

The Control Board authority is limited to complaints concerning air contaminant sources located in areas where the Board finds after a hearing that no local air pollution law or regulation consistent with the Act is in effect or that the local law or regulation is not being enforced adequately, and in the Board's opinion, is not intended to be so enforced.

B. HEARINGS

The Control Board may hold a hearing concerning a suspected violation on its motion, or on complaint filed by any person, by a city, county, town or the State Board of Health. The notice and hearing procedures are controlled by the State Administrative Adjudication and Court Review Act.

IV. PENALTIES (Sec. 7)

It is unlawful to refuse to comply with any rule, regulation or order of the Board, or to interfere with or deny entrance to Board or State Board of Health personnel in their official duties.

V. SCOPE AND CONSTRUCTION

A. This Act shall not prohibit towns, cities or counties from enacting air pollution control ordinances which do not conflict with the Act and are designed to effectuate its general intent and purpose (Sec. 8).

B. If any part of this Act is for any reason held unconstitutional, such determination shall not affect the validity of the remainder of the Act (Sec. 9).

VI. EFFECTIVE DATE

The Act, approved March 3, 1961, became effective on January 1, 1963.

2. Motor Vehicle Air Pollution

Every motor vehicle is required to be equipped with a muffler to prevent "annoying smoke" and the engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to "prevent the escape of excessive fumes or smoke" (Chapter 260, Laws of 1961).

3. Tax Exemption of Air Pollution Control Systems

Any tangible personal property not used in the production of property for sale but constituting a stationary facility as part of a privately-owned manufacturing or industrial plant and employed exclusively in the operation of an industrial air purification system designed and used for improvement of public health and welfare in the elimination of air contamination caused by industrial wastes and contaminants for which no sanitary treatment or elimination service is provided by public authorities shall be exempt from taxation by the State of Indiana and any political subdivision thereof.

Exemptions shall be claimed on the owner's personal property tax returns, be allowed or denied by the township assessor, subject to review by the County Board of Review and the State Board of Tax Commissioners. (Senate Bill 25, enacted March 6, 1965)

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Iowa [1]

I. GENERAL STATEMENT

In 1951 Iowa amended its statutory definition of nuisance to include "the emission of dense smoke, noxious fumes, or fly ash in cities" and provided that "cities may provide the necessary rules for inspection, regulation, and control" thereof (§ 657.2 (11)).

II. PROCEDURE

A civil action by ordinary proceedings to enjoin and abate a nuisance and to recover damages may be brought (§ 657.1).

III. PENALTY

The penalty for maintaining a nuisance is a fine not to exceed $1000 or imprisonment not exceeding one year, and the court, with or without the fine, may order the nuisance abated (§ 657.3).

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[1] Citations refer to the Iowa Code Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Kansas 1/

I. GENERAL STATEMENT

In 1907 Kansas enacted a statute enabling the State and local boards of health to investigate and control upon private property or watercourses nuisances, sources of filth and causes of sickness (§ 65-159).

II. ADMINISTRATIVE ORGANIZATION

The State board of health and the local boards of health have authority to examine into all nuisances, sources of filth and causes of sickness that in their opinion may be injurious to the health of the inhabitants within any county or municipality of the State (§ 65-159).

III. PROCEDURE

If a nuisance is found on private property or watercourse the boards of health may order in writing the owner or occupant at his own expense to remove the nuisance within twenty-four hours or such reasonable time as the board may order (§ 65-159).

IV. PENALTY

A. A fine of not less than $10 or more than $100 may be assessed upon conviction and each day's continuance of the nuisance is a separate offense (§ 65-159).

B. It is the duty of the county attorney to prosecute violations of the nuisance statute (§ 65-160).

V. MOTOR VEHICLES

Every motor vehicle is required to be equipped with a muffler to prevent "annoying smoke" and the engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to "prevent the escape of excessive fumes or smoke" (§ 8-5, 103). (S. B. 398; Ch. 61, Laws of 1963; approved April 5, 1963)

1/ Citations refer to General Statutes of Kansas (Annotated) 1949.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Kentucky

1. Air Pollution Control Commission [1]

I. GENERAL STATEMENT

This act creates an 11 member air pollution control commission in the department of health. The board is empowered to adopt rules and regulations, hold hearings, conduct studies, fix standards, and represent the state in negotiations.

The act expressly prohibits any person, directly or indirectly, to emit into or discharge into the air, or to cause, permit, or allow to be emitted or discharged into the air any air contaminants.

II. DEFINITIONS

A. "Person" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or other entity whatsoever. (Sec. 1 (4)).

B. "Air Pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is or threatens to be injurious to human, plant or animal life, or to property, or which unreasonably interfere with the comfortable enjoyment of life or property. (Sec. 1 (6)).

C. "Air Contaminant Source" is any and all sources of emission of air contaminants, public or private. (Sec. 1 (8)).

III. KENTUCKY STATE AIR POLLUTION CONTROL COMMISSION

A. Composition and Organization

The commission consists of 11 members, five governmental and six public, appointed by the governor for four year terms. The governmental members are the commissioners of health, commerce, natural resources, agriculture, and the attorney general. Of the six public members, one shall be a member of the general public, at least one shall be a licensed professional engineer trained in air pollution control, one shall represent an air pollution control district, one shall represent the college of engineering, University of Kentucky. At least three of the public members shall represent industry and be experienced in matters of air pollution control. (Sec. 2 (1), 9 (b)).

Commonwealth officers made members of the commission may file a written order with the secretary to designate a deputy or other representative in his department to serve in his absence. (Sec. 2 (c)).

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[1] Citations refer to House Bill number 259, approved March 8, 1966.

Regular meetings will be held at least once every three months. Special meetings may be called by the chairman or by three members. Five days notice prior to the meeting must be given each member. (Sec. 2 (6)).

Seven members constitutes a quorum. (Sec. 2 (6)).

B. Powers and Duties

The Kentucky air pollution control commission shall have the following powers and duties:

1. To cooperate with United States public health service and other federal agencies, to receive federal funds available under existing or future legislation. To accept, receive, administer grants and other funds from public and private sources. (Sec. 3 (1) (2), 4 (9)).

2. To cooperate with other state, inter-state agencies, industries, state agencies and subdivisions. (Sec. 3 (1), 4 (8)).

3. To review and make recommendations, establish priorities, accept and administer loans and grants from other than federal sources. (Sec. 3 (4)).

4. To issue, amend and repeal rules and regulations consistent with this act and to issue orders necessary to the prevention, abatement and control of existing or threatened pollution and to effectuate the act's purpose. (Sec. 4 (1) (3) (11)).

5. To hold hearings, compel witness attendance, and produce evidence. (Sec. 4 (2)).

6. To require record maintenance and availability in regard to operations which may cause or contribute to air pollution. (Sec. 4 (4)).

7. To secure necessary scientific, technical, administrative and operational services by contract or otherwise. (Sec. 4 (5)).

8. To prepare comprehensive air pollution prevention, abatement, and control plans and conduct educational and training programs in regard to air pollution. (Sec. 4 (7), 4 (6)).

9. To establish, modify or amend various air pollutants ambient air and emission standards from any source. Such levels or concentrations shall be controlling throughout the state. (Sec. 4 (10) (a)).

10. To adopt rules and regulations in regard to hearing procedures. (Sec. 4 (12)).

11. To require the use of all available, practical and reasonable methods of air pollution control and prevention. (Sec. 6).

12. To issue regulations to:

    a. Require persons engaged in operations resulting in air pollution to register with the commission and to file certain reports. (Sec. 7).

    b. Prohibit installing, altering or using certain contaminating or controlling machines, equipment or devices without a permit. (Sec. 8 (1)).

    c. Require that a permit application contain certain plans, specifications, or other information. (Sec. 8 (2)).

    d. Issue, suspend, revoke or renew permits. (Sec. 8 (3)).

13. To enter and inspect the property, premise or place to investigate an actual or suspected air pollution source or to ascertain the state of compliance with regulations. (Sec. 9).

IV. EXECUTIVE SECRETARY

A. The health department chief engineer shall be the executive secretary. He may perform such functions and duties and exercise such authority as the commission delegates to him. He may designate one or more assistants to act in his place when absent or otherwise unable to perform his duties. (Sec. 2 (4)).

B. When he finds a person causing or contributing to air pollution and creating an emergency, he shall order, with written notice to the governor, such person to reduce or discontinue immediately the air pollution. He then shall fix a place and time for a hearing before the commission at which the executive secretary's order shall be affirmed, modified or set aside. (Sec. 12).

V. PROCEDURE

A. Public Hearings

Hearings on violations may be conducted at a regular or special meeting or by a hearing officer appointed by the commission to serve in its place. (Sec. 16 (1)).

B. Rules

In adopting rules and regulations the commission shall give due recognition to the quantity or characteristics of air contaminants or the duration of their presence in the atmosphere. It shall take into consideration in this connection such factors, among others, found by it to be proper and just, existing physical conditions, public benefit, that the degree of conformance therewith that may be proper as to an essentially residential area of the state may not be proper as to a highly industrial area of the state, and, further, the relationship between the intensity and composition of air pollution and the health of the public and damage to or interference with enjoyment of property. It shall give reasonable consideration to the interests of all parties concerned. (Sec. 6).

C. Local Air Pollution Districts

1. Every county establishing a local Air Pollution Control Program (Chapter 77) shall submit a synopsis of its program, standards and procedures to the State Department within 90 days of enactment or of local program establishment. (Sec. 14 (1)).

2. If the commission determines a Program meets proper standards and that such program will be administered correctly, the jurisdiction for the purposes of this act shall be ceded to the local Program Administrative Agency. The commission may reassume jurisdiction after formal hearing when the local Program doesn't meet state standards. (Sec. 14 (2)).

D. Enforcement

1. The commission shall cause a written notice to be served on an alleged violator which specifies what provision of the act or rule or regulation is alleged violated. It may order corrective action, and such order becomes final unless the person named requests a hearing less than 30 days after the order is served. The commission may require an alleged violator to appear before it for a hearing in lieu of an order. (Sec. 11 (1)).

2. After a hearing the commission shall affirm, modify or rescind its order or issue appropriate orders for the control of the air pollution involved. Such order shall include the date by which the violation shall cease and may prescribe time-tables for necessary preventive or controlling action. (Sec. 11 (2)).

3. The commission shall attempt compliance through warning, conference or other appropriate means. (Sec. 11 (3)).

E. Variances

1. Any person owning or controlling a plant, business, process etc., may apply to the commission for an exemption or partial exemption from rules or regulations promulgated under this act in regard to quality, nature, duration or extent of air pollutants discharged. (Sec. 13 (1)).

2. Such exemption may be granted under the following conditions:

a. When the discharge does not constitute a danger to public health or safety. (Sec. 13 (1) (a)).

b. When rule compliance would produce serious hardship without equal or greater benefit to the public. (Sec. 13 (1)).

c. After public hearing on due notice and after the commission has considered the relative interests of the applicant, other property owners apt to be affected by discharges, and the general public. (Sec. 13 (1) (c), 13 (2)).

3. Exceptions shall be for a period of one year and may be renewed if no justified complaints have been made to the commission. Application for renewal must be made at least 30 days prior to exemption expiration. Immediately prior to renewal the applicant shall give public notice of his intentions. (Sec. 13 (3)).

4. An exemption, partial exemption or renewal is not a right. (Sec. 13 (2)).

F. Confidential Information

Any records or other information furnished to the commission in regard to air pollution sources which relate to processes or production unique to the owner or operator which would tend to adversely affect the competitive position of such owner or operator shall be only for the confidential use of the commission and other departments, agencies and officers of the state government unless such owner or operator shall expressly agree to their publication or availability to the general public.

Such records or information may be used by state government officials to compile or publish analyses or summaries in regard to the general condition of the outdoor atmosphere provided there is no identification of owners or operators and no confidential information is released. (Sec. 10).

VI. JUDICIAL REVIEW

Appeals may be taken from all commission orders within 30 days of rendition of such order at a county circuit court. The affected parties will file a petition stating the grounds for review and assign all errors relied on. The commission shall be named respondent, and service shall be had on the Executive Secretary. The commission shall send its entire original record upon summons. Any party directly affected by the issues on appeal may intervene after the case is properly docketed. The commission findings shall be prima facie evidence of the facts found therein. Appeals shall be taken in the manner prescribed in the State Rules of Civil Procedure. (Sec. 16 (2) (3)).

VII. VIOLATIONS AND PENALTIES

1. Violation of any provision of the act, or of any order or determination of the commission or failure to perform duties is

liable to civil penalty of a maximum of $1000 for each violation plus an additional maximum of $1000 civil penalty for each day such violation continues. (Sec. 17 (1)).

2. The attorney general, upon the commissions request, shall bring actions in the name of the commonwealth to recover the penalties and shall bring action for an injunction against any person commiting a violation or threatening to commit one. The attorney general's authority is exclusive. (Sec. 17 (2) (4)).

3. Any person who shall willfully violate any of the provisions of this act or any determination or order of the commission promulgated pursuant to those sections which has become final shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment for a term of not more than one year or by both fine and imprisonment for each separate violation. Each day upon which such violation occurs shall constitute a separate violation. (Sec. 17 (4)).

VIII. EFFECTIVE DATE

Approved, March 8, 1966.

2. County Air Pollution Control Districts[1]

I. GENERAL STATEMENT

The Kentucky Air Pollution Control Act, enacted in 1952, establishes statewide standards for air pollution control with enforcement on a county basis at local option.

Air contaminant is defined to include "smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, odors, or particulate matter, or any combination thereof" (§ 77.055 (2)).

The statute creates in each county an air pollution control district (§ 77.010) and provides for air pollution control boards to be the governing bodies of such districts (§§ 77.065, 77.070, 77.115).

II. ADMINISTRATIVE ORGANIZATION

A. ESTABLISHMENT OF COUNTY AIR POLLUTION CONTROL DISTRICTS

An air pollution control district is established in each county with boundaries coextensive with the county (§ 77.010).

B. ACTIVATION OF DISTRICTS

Air pollution control districts are authorized to function,only after a resolution by the appropriate county fiscal court, and, in addition, in the case of a county containing a city of the first or second class, a municipal ordinance, declaring that there is a need for an air pollution control district to function in the county and the city respectively (§§ 77.015; 77.055 (4)).

The resolution and ordinance are authorized only if, from evidence received at separate public hearings as to which required public notice has been given (§§ 77.020, 77.025, 77.040) it is found there is need for a district to function because:

1. The air within the county is so polluted with air contaminants as to be injurious to health, or an obstruction to the free use of property, or offensive to the senses of a considerable number of persons, so as to interfere with the comfortable enjoyment of life or property (§§ 77.030; 77.035).

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[1] Citations refer to Kentucky Revised Statutes - July 1960.

2. It is not practical to reply upon the enactment or enforcement of local ordinances to prevent or control air pollution (§§ 77.030; 77.035).

C. GOVERNING BODY OF DISTRICT

An air pollution control board is the governing body of the air pollution control district (§ 77.115).

1. Organization and composition

   a. The members of the fiscal court of a county are, ex officio, the members of the air pollution control board and they and their personnel are to perform the same duties for the board as for the county (§ 77.065).

   b. In the county containing a city of the first or second class the air pollution control board consists of three members appointed by the county judge, and four members appointed by the mayor of the city of the first or second class contained within the county (§ 77.070).

   c. Persons interested in the sale of air pollution control equipment are ineligible for membership on the board or for employment by the board (§ 77.110).

   d. Meetings of each board are held at least once each calendar month (§ 77.080).

   e. In a county containing a city of the first or second class the air pollution control board, in July of each year, elects from its membership a chairman and a vice-chairman (§ 77.085).

   f. A majority of the members of the board constitute a quorum for all purposes. The affirmative vote of at least a majority of the membership of the board is necessary for the adoption of any motion, measure, or resolution unless the bylaws of the board require a larger number (§ 77.080).

   g. All air pollution control board members serve without compensation other than recovery of actual expenses from district funds (§ 77.075).

2. Duties and powers

   a. In general, the district has the powers of a body corporate

(§§ 77.050--77.060).

b. The board may make and enforce all needful orders, rules, and regulations necessary and proper to accomplish the purposes of the statute (§ 77.180) after a public hearing of which the required public notice has been given (§ 77.185).

c. The board of a district containing a city of the first or second class is required to employ a secretary-treasurer and an air pollution control officer, neither of whom may be a member of the board, and may provide for them to employ various personnel (§ 77.085).

The board of a district not containing such a city may appoint an air pollution control officer and provide for him to employ other personnel (§ 77.090). The air pollution control officer is directed to enforce the Act and the rules and regulations of the board (§ 77.145). He and his assistants are given by statute rights of entry and inspection (§ 77.165), and the status of peace officers (§ 77.145).

d. The board may employ and remove professional and technical advisers, experts and other employees at its pleasure as it deems necessary (§ 77.095).

e. The board must require bond of the secretary-treasurer and air pollution control officer and may require it of other officers and employees (§ 77.100).

f. The air pollution control board appoints a hearing board of three members, to serve, after the initial terms, for staggered terms of three years each (§ 77.105).

g. The air pollution control board may fix reasonable limits for particular air contaminants or other material which in their opinion may cause injury, detriment, nuisance, or annoyance to the public (§ 77.155).

h. The air pollution control board may by regulation require a permit before any equipment which may cause the issuance of air contaminants may be built, erected, altered, replaced, used or operated, and, as a condition of the permit may require use of approved equipment to reduce or eliminate air pollution. Four statutory exceptions to such requirements are:

1. Mobile equipment;
2. Dwellings for less than five families;
3. Agricultural equipment; and
4. Repairs or maintenance of approved equipment (§ 77.195).

i. The air pollution control board may contract with the county or any city within the district for assistance in regulation of installations which may issue air contaminants (§ 77.195).

D. FINANCING

1. In a county where the air pollution control district has been activated, the fiscal court and the legislative body of a city of the first or second class, if there is one, may annually appropriate funds to the district (§ 77.125). Provisions are also made for the preparation of budgets by the boards and for related fiscal procedures (§§ 77.130--77.140).

2. Fees

a. A schedule of permit fees may be established by the board to cover the cost of issuing permits and inspections (§ 77.205). These fees may be paid directly to a city when a contract for assistance has been made or into the district treasury (§ 77.120).

b. A schedule of fees covering the cost of administering the variance provisions (§§ 77.245--77.275) may be established. The fees are paid into the district treasury (§ 77.255).

E. PROHIBITED EMISSION OF AIR CONTAMINANTS AND OPERATIONS EXEMPTED

1. Prohibited emissions

The discharge from any single source of emission of any air contaminant which is as dark or darker than Ringelmann No. 2 and of such opacity as to obscure an observer's view to a degree equal to or greater than Ringelmann No. 2 for a period or periods aggregating more than three minutes in one hour is prohibited.

It is also prohibited to discharge such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to or which endanger the comfort, repose, health or safety of the public, or which cause or tend to cause injury to business or property (§ 77.155). (See also II C 2 g. of this digest.)

2. Exemptions

Exempted from the prohibition are buildings used exclusively for private residences and containing fewer than five dwelling units, equipment used for agricultural operations, and smoke from fires authorized by any public officer. Also exempted are air contaminants emitted when a fuel consuming device is being cleaned and a new fire being built therein, in which case smoke greater than the prohibited density is permitted for no longer than six minutes in every 60 minutes (§ 77.160).

III. PROCEDURES

A. COMPOSITION AND ORGANIZATION OF HEARING BOARD

1. The hearing board of an air pollution control district consists of three members appointed by an air pollution control board (§ 77.105). It is required to select a chairman from its members (§ 77.285).

2. The board may hold a hearing en banc or may designate one or two of its members to hold a hearing (§ 77.285).

3. If two or three members conduct a hearing the concurrence of two is necessary for a decision (§ 77.285).

4. The board may issue subpoenas to be served as in a civil action (§ 77.290).

5. The board may require witnesses to be sworn (§ 77.300).

B. PERMITS--SUSPENSION AND REVOCATION OF PERMITS

1. An air pollution control officer may suspend a permit if the permittee does not furnish him with required information and must serve on the permittee notice in writing of and the reasons for such suspension (§ 77.220). When the information is furnished, the permit is to be reinstated. The air pollution control officer may reinstate the permit when "good reasons" exist (§ 77.020).

2. Within 10 days after receipt of notice of suspension a permittee may file with the hearing board a demand for a public hearing (§ 77.220).

3. An air pollution control officer may request a public hearing

regarding revocation or suspension of a permit (§ 77.225).

4. The hearing board must give 10 days' notice of the time and place of the public hearing to the permittee, to the air pollution control officer and to such other persons as the board deems should be notified (§ 77.225).

5. After public hearing the hearing board may continue the suspension of a permit, find that no violation exists and reinstate an existing permit, or remove the suspension pending furnishing by the permittee of the information required (§ 77.230).

C. VARIANCES

1. The hearing board may permit variances (§ 77.245). At least 10 days' notice of the time and place of a hearing to grant a variance must be given to the air pollution control officer and to the applicant (§ 77.250).

2. After public hearing held after requisite notice the hearing board may revoke or modify any variance (§ 77.265).

3. Statutory standards for granting a variance are prescribed which include a finding that compliance will result in the closing of a lawful business without sufficient corresponding benefit in the reduction of pollution (§ 77.260).

D. APPEALS

Appeal may be taken by a party to the hearing, including the air pollution control district, from the finding of the hearing board to the circuit court of the county in which the district is located and from the circuit court to the Court of Appeals of Kentucky (§ 77.035).

IV. VIOLATIONS AND PENALTIES

A. The making of false statements in applications, reports, etc.; the failure to supply required information; the failure to obtain required permits or operations contrary to permit, and failure to comply with regulations are included as violations of the statute (§ 77.255).

B. Violations of the statute are punishable by fine (§ 77.990) and may be enjoined (§§ 77.175; 77.240).

C. Subpoenas issued by a hearing board are enforced by contempt proceedings and attachment of the person. The same penalties and punishment may be imposed as in the case of a witness subpoenaed in a trial of a civil cause before a circuit court (§ 77.295).

V. SCOPE AND CONSTRUCTION

The statute does not pre-empt the field and does not prohibit the enactment or enforcement of any local ordinance stricter than therein provided (§ 77.170).

VI. EFFECTIVE DATE

The effective date of this chapter is March 14, 1952.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Louisiana

1. Louisiana Air Control Law [1]

I. GENERAL STATEMENT

This law is declared to be the exclusive means within the State to control air pollution. An Air Control Commission is created and authorized to adopt rules and regulations, hold hearings, enter orders, and represent the State in negotiations of interstate compacts. Provision is made for judicial review of Commission orders and for enforcement of final orders through injunctions.

II. DEFINITIONS

A. "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, or vapor, or any combination thereof produced by processes other than natural (Sec. 2 (a)).

B. "Source" is any and all points of origin of the items defined in Section 2 (a), whether privately or publicly owned or operated (Sec. 2 (b)).

C. "Undesirable levels" of the items defined in Section 2 (a) is the presence in the atmosphere of one or more of such items or combinations thereof in quantities and concentrations and of such characteristics, properties and duration as to appreciably injure human life beyond inconvenience or in quantities and concentrations and of such characteristics, properties and duration as to materially injure or interfere with the reasonable use of animal or plant life or property (Sec. 2 (c)).

D. "Person" is any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision or any other legal entity or their legal representatives, agents or assigns. (Section 2 (d)).

III. LOUISIANA AIR CONTROL COMMISSION

A. COMPOSITION AND ORGANIZATION (Sec. 3)

The members of the Commission are the President of the State Board of Health, the Director of the State Board of Commerce and Industry, the Commissioner of Agriculture and Immigration, or their authorized representative, one registered professional engineer, one physician, one individual actively engaged in management of a private manufacturing concern, one person experienced in municipal government. Terms are for four years with no limitation on number of terms. Five members constitute a quorum. The President of the State Board of Health is the chairman.

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[1] Citations refer to Senate Bill No. 377, Act 259, Laws of 1964, approved July 12, 1964.

B. **POWERS AND DUTIES:**

The Commission shall have the power or duty:

1. To prepare and develop a general plan for the proper control of the air resources of Louisiana (Sec. 4 (a)(1)).

2. To adopt and promulgate rules and regulations consistent with the general intent and purposes of the law (Sec. 4 (a)(2)).

3. To enter at all reasonable times in or upon any private or public property except private residences or dwellings for the purpose of inspection and investigation (Sec. 4 (a)(3)).

4. To hold hearings upon complaints or petitions for variance and issue subpoenas requiring the attendance of witnesses and the production of such papers and documents as are related to such hearings (Sec. 4 (a)(4)).

5. To enter such orders or determinations as may be necessary to effectuate the purposes of the law (Sec. 4 (a)(5)).

   In making its recommendations, orders, and determinations, the Commission shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions involved including, but not limited to:

   a. The character and degree of injury to, or interference with, the health and physical property of the people (Sec. 4 (a)(5)(ii)(a));

   b. The social and economic value of the source of the undesirable levels (Sec.4 (a)(5)(ii)(a));

   c. The question of priority of location in the area involved (Sec. 4 (a)(5)(ii)(c)), and

   d. The technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from such source (Sec. 4 (a)(5)(ii)(d)).

6. To institute legal proceedings to compel compliance with orders (Sec. 4 (a)(6)).

7. To request and be entitled to receive the assistance of any State educational institution, experiment station, board, department or other State agency when necessary to carry out the provisions of the law (Sec. 4 (a)(7)).

8. To encourage voluntary cooperation in restoration and preservation of a reasonable degree of air purity within the State (Sec. 4 (b)(1)).

9. To encourage and conduct studies, investigations and research concerning air control (Sec. 4 (b)(2)).

10. To collect and disseminate information on air control (Sec. 4 (b)(3)).

11. To advise, consult and cooperate with other agencies of the State, industries, other States and Federal government, and with interested persons or groups (Sec. 4 (b)(4)).

12. To represent the State in any and all matters pertaining to plans, procedures, or negotiations for interstate compacts (Sec. 4 (b)(5)).

13. To employ and compensate, within available appropriations, such consultant and technical assistants on a full or part-time basis as may be necessary to carry out the provisions of the law and to prescribe their powers and duties (Sec. 4 (b)(6)).

14. To accept, receive, and administer grants or other funds or gifts through the State Board of Health acting as agent for the Commission, and accept, receive and receipt for Federal monies (Sec. 4 (b)(8)).

C. JURISDICTIONAL LIMITATION

Nothing contained in the law shall be deemed to grant to the Commission any jurisdiction or authority to make any rule, regulation, recommendation or determination or to enter any order with respect to air conditions existing solely within the property boundaries of commercial and industrial plants, works or shops or to affect the relations between employers and employees with respect to or arising out of any air condition (Sec. 4 (c

IV. TECHNICAL SECRETARY

A. The technical secretary of the Commission shall be the Director of the Division of Public Health Engineering of the State Board of Health or the person who is performing the major duties which, on the effective date of the law, were assigned to that position (Sec. 3).

B. POWERS AND DUTIES

The Technical Secretary, or his authorized representative, shall have the following powers and duties:

1. Make the notifications required by Section 3 of the law (Sec. 5(a)).

2. Attend all meetings of the Commission but shall not be entitled to a vote (Sec. 5(b)).

3. During the interim between meetings of the Commission, handle such correspondence, make or arrange for such inspections and investigations, and obtain, assemble or prepare such reports and data as the Commission may direct or authorize (Sec. 5 (c)).

The Technical Secretary shall exercise general supervision over all persons employed by the Commission. He shall be responsible for the investigation of complaints, the recommendation to the Commission of the issuance of formal complaints by the Commission and for the presentation of such complaints before the Commission, and shall have such other duties as the Commission may prescribe (Sec. 5 (d)).

V. PROCEDURE

A. HEARINGS

1. At any public hearing, all testimony taken before the Commission shall be under oath and recorded stenographically. The transcript so recorded shall be made available to any member of the public or to the respondent or party to a hearing on a complaint upon payment of the usual charges (Sec.9 (a)).

2. In any such hearings, any member of the Commission may examine witnesses (Sec. 9 (b)).

3. All hearings shall be had before at least five (5) members of the Commission (Sec. 9 (c)).

B. RULES AND REGULATIONS

1. Approval in writing of at least four (4) members of the Commission shall be necessary for the adoption, amendment or repeal of a rule or regulation (Sec. 6 (a)).

2. Before a rule may be adopted, amended or repealed, there must be a public hearing on thirty (30) days notice by public advertisement in the official journal of the State setting forth the date, time, place and purpose of such hearing. Opportunity to be heard by the Commission and to examine any witness testifying at the hearing shall be given any persons or their representatives. Any person heard, represented, or requesting notice shall be given written notice by registered mail of the Commission's action (Sec. 6 (a)).

3. No Commission action relative to a rule or regulation shall become effective until a certified copy has been filed with the Secretary of State (Sec. 6 (a)).

4. A rule or regulation or any amendment thereof adopted by the Commission may differ in its terms and provisions as between particular conditions, sources, and areas of the State (Sec. 6 (b)).

5. In adopting rules and regulations, the Commission shall give due recognition to the fact that the quantity or characteristics of air contaminants or the duration of their presence in the atmosphere which may cause a need for air control in one area of the State may not cause need for air control in another area of the State and in this connection the Commission shall take into consideration such factors, among others found by it to be proper and just, as: (Sec. 6 (b))

a. Existing physical conditions,

b. Zoning classifications,

c. Topography and prevailing wind velocities, and

d. The fact that a rule or regulation and degree of conformance which may be proper for an essentially residential area may not be proper for a highly developed industrial area.

6. The validity of any rule or regulation may be determined upon the petition of any person for a declaratory judgment addressed to the District Court of the judicial district in which petitioner has his principal place of business, or where the property affected is located, when the rule or regulation or its threatened application interferes with or impairs, or threatens to interfere with or impare the legal rights or privileges of the petitioner. The Commission shall be made a party to the proceedings, and service shall be made upon the Technical Secretary of the Commission, whose domicile for the purpose of service under the law shall be deemed to be the office of the Commission (Sec. 7).

C. ENFORCEMENT

1. The Technical Secretary must cause investigations to be made upon the request of the Commission or upon receipt of information concerning an alleged violation of the law or any rule or regulation promulgated thereunder. If, in the opinion of the Technical Secretary or of the Commission, such investigation discloses that a violation does exist, he or the Commission shall by private conference, conciliation and persuasion, endeavor to the fullest extent possible to eliminate such violation (Secs. 8 (a) and (b)).

2. If conference, conciliation and persuasion fail and the Technical Secretary files a formal complaint with the Commission, the Commission may have issued and served a written notice and a copy of the formal complaint which specifies both the provision allegedly violated and the manner and extent of such violation. A person so complained against must answer the charges of such formal complaint at a hearing before the Commission not less than thirty (30) days after the date of notice (Sec. 8 (b)).

3. The respondent may file a written answer to the complaint and may appear at the hearing in person or by representative, with or without counsel. He may make oral argument, offer testimony or cross examine any witnesses. The Technical Secretary shall subpoena such witnesses as the respondent may reasonably designate and shall require the production of such written evidence as reasonably relates to the matter under investigation. The Commission shall be controlled by the rules of evidence in effect in the district courts at the time of such hearing (Sec. 8 (c)).

4. Upon due consideration of the record or upon respondent's default in appearing, the Commission shall issue its determination or final order approved, in writing, by at least four members and shall immediately notify the respondent thereof by registered mail (Sec. 8 (d)).

5. Upon failure of the Commission to enter a final order or determination within sixty (60) days after final argument, the respondent shall be entitled to treat for all purposes such failure to act as a finding favorable to the respondent (Sec. 12 (a)).

6. In all proceedings with respect to alleged violations, the burden of proof shall be on the Technical Secretary (Sec. 8 (d)).

D. VARIANCES

1. Variances, for periods of up to one year, may be granted by the Commission if it is determined that strict compliance with a provision or Commission order will result in an arbitrary and unreasonable taking of property or in the practical closing of any lawful business or activity and is without corresponding public benefit. In determining the conditions and extent of variance, the Commission shall recognize progress made in eliminating air pollution, considering the reasonableness of conditioning the variance upon partial abatement over an estimated reasonable period or of conditioning it upon other requirements. Any variance may be conditioned upon periodic reports on the progress of compliance (Sec. 11 (a), (b), and (c)).

2. A person seeking a variance shall petition the Technical Secretary to that effect. The Secretary shall investigate such petition and recommend action on it to the Commission. If the recommendation is favorable, the Commission may grant the variance without hearing; if it is not favorable, or if the Commission determines that a hearing would be desirable, a hearing similar to that specified in the section on enforcement, above, shall be held, but the burden of proof shall be on the petitioner (Sec. 11 (d)).

3. Upon failure of the Technical Secretary to take action within sixty (60) days after receipt of a petition for variance, the person affected shall be entitled to treat for all purposes such failure to act as a grant of the variance (Sec. 12 (a)).

E. CONFIDENTIAL INFORMATION

Any information relating to secret processes or methods of manufacture or production obtained by the Technical Secretary in the administration of the law shall be kept confidential (Sec. 10).

VI FEES

No fees shall be charged by the Technical Secretary or the Commission for the performance of any of their respective functions (Sec. 12 (b)).

VII. JUDICIAL REVIEW

A. All orders or determinations of the Commission shall be subject to judicial review by the District Court of any judicial district where the property affected by the order or determination is located in whole or in part or in the District Court of the judicial district in which the Commission has its domicile (Sec. 13).

B. The record made before the Commission shall be admissible in evidence, but either the petitioner or the Commission may introduce additional evidence (Sec. 13).

VIII. INJUNCTIVE RELIEF AND PENALTIES

A. In the event the Commission shall determine that any order made by it and not then the subject of judicial review is being violated, the Commission may institute a civil action in the District Court for any parish in which the violation occurs for injunctive relief to prevent further violation of such order, or

B. For the assessment of such penalty not to exceed $50 per day for each day such violation continues as the court may deem proper (Sec. 14).

C. It shall be the duty of the Attorney General to bring such action, at the request of the Commission, in the name of the State (Sec. 14).

IX. SCOPE AND CONSTRUCTION

A. The basis for proceedings or other actions that shall result from violations of any rule or regulation which shall be promulgated by the Commission shall inure solely to the benefit of the people of the State generally. It is not intended to create in any way new rights or to enlarge existing rights or to abrogate existing private rights (Sec. 15).

B. This law shall be the exclusive means within the State for the control of air pollution (Sec. 17).

C. Nothing in the law shall be construed to prevent private actions to abate nuisances (Sec. 17).

D. If any part of the law shall be adjudged unconstitutional, such adjudication shall not affect the validity of the law as a whole or of any part not adjudged unconstitutional (Sec. 16).

X. EFFECTIVE DATE

Approved, July 12, 1964

Maine 1/

"The erection, continuance or use of any building or place for the exercise of a trade, employment or manufacture which, by noxious exhalations, offensive smells or other annoyances, becomes injurious and dangerous to the health, comfort or property of individuals, or to the public . . . (are) declared to be public nuisance(s)" (Ch. 141, sec. 6).

"The local health officers shall receive and examine into the nature of complaints made by any of the inhabitants concerning nuisances dangerous to life and health within the conditions dangerous to health and life are known or believed to exist, and personally, or by appointed agents, inspect and examine the same; and all owners, agents and occupants shall permit such sanitary examinations; and every such health officer shall order the suppression and removal of nuisances and conditions detrimental to life and health found to exist within the limits of his jurisdiction" (Ch. 25, sec. 48).

The Maine legislature has directed the departments of forestry, inland fisheries and game, sea and shore fisheries, and the aeronautics commission as to, inter alia, the protection, if necessary, of the airspace from pollution, to initiate and to pursue continuing studies as to the need, if any, for changes in the laws and regulations administered by it that would arise from the presence within the State of special nuclear, source, by-product, and radioactive materials, and from the operation in Maine of production or utilization facilities, and, on the basis of such studies, to make such recommendations for the enactment of laws or amendments to law administered by it, and such proposals for amendments to the regulations issued by it, as may appear necessary and appropriate (C. 52-A, § 4. VII).

1/ Citations refer to Revised Statutes of Maine 1954.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Maryland [1]

I. GENERAL STATEMENT

A. PURPOSE

It is the policy of the State of Maryland to maintain such degree of purity of the air resources of the State as is technically feasible, economically reasonable, and necessary for the protection of the health, general welfare and property of its people. The measures for the accomplishment of this purpose are not unreasonably to obstruct the operation and development of business and industry. Such purposes are at all times sought to be effectuated by conference, cooperation, and persuasion; provided, however, that powers and enforcement procedures here established may be exercised whenever further persuasion would be of no avail. (Sec. 690)

B. DEFINITION

Air pollution is "the presence in the outdoor atmosphere of substances in quantities, having characteristics and being of a duration which, from any single source or in combination with other sources are, or will be, injurious to human, plant or animal life or to property, or which unreasonably interfere with the proper enjoyment of the property of others by reason of the emission of odors, solids, vapors, liquids or gases, throughout the State and in such areas of the State as are affected thereby". (Sec. 691 (1)) It does not encompass refuse burning on an individual's property, or when it is not a nuisance, by local government. (Sec. 704)

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[1] Citations refer to sections 690 to 706 of Article 43 of the Annotated Code of Maryland (1957 Edition, 1965 Replacement Volume), amended by Chapters 453 of Laws 1966.

II. ADMINISTRATIVE ORGANIZATION

A. AIR POLLUTION CONTROL COUNCIL

1. Organization and composition

a. The council consists of nine members appointed (and removable) by the Governor from: A list of three names submitted by the Baltimore section of the American Society of Mechanical Engineers (1); a list of three names submitted by the Maryland section of the American Institute of Chemical Engineers (1); a list of six employees of manufacturing or public utility firms within the State submitted by the Chamber of Commerce of Metropolitan Baltimore, Inc. (2) (the foregoing to be experience and competent in air pollution control) and a list of three names submitted by the State Board of Health and Mental Hygiene (1). The remaining members to be appointed from lists of not less than three names to be submitted by the President of the University of Maryland (1); the President of the Johns Hopkins University (1); the Chairman of the Board of Directors of the Council of Governments of Metropolitan Washington (1), and the President of the Maryland State-D.C. AFL-CIO. The Governor, in making his appointments, is to give due consideration to representation from the various geographic areas of the state, with a least one member actively engaged in farming and who is knowledgeable in farm and rural pollutant problems (Sec. 694 (a) as amended Sec. 1, Chapter 661, Laws 1966). They serve overlapping five-year terms (Sec. 694 (b) as amended Sec. 1, Chapter 661, Laws 1966), without compensation save repayment for actual expenses (Sec. 694 (f)). The members annually elect a chairman and a secretary and shall meet at such places as may be specified by the Chairman, the Board or the Governor at least ten times in each year (Sec. 694 (g) as amended Sec. 1, Chapter 661, Laws 1966). Five members constitute a quorum (Sec. 694 (e) as amended Sec. 1, Chapter 661, Laws 1966).

2. Duties and powers

The Council is authorized:

a. To formulate and recommend to the State Board of Health and Mental Hygiene rules and regulations for control of air pollution;

b. To recommend to the Board the amendment or repeal of any rule or regulation where amendment or repeal, in the opinion of the Council, is in the best interest of the State;

c. To review the air pollution policies and programs of the Board;

d. To consult with and advise the Board on matters relating to air pollution; and

e. To hold hearings on:

(1) Violations of rules and regulations, when required by the State Department of Health;

(2) The adoption, amendment and repeal of air pollution rules and regulations (Secs. 692 (1), 695 as amended, Sec. 1, Chapter 453, Laws 1966, Sec. 698 (a)).

B. STATE BOARD OF HEALTH AND MENTAL HYGIENE

In addition to powers conferred upon it by other laws (§ 706), the Board is authorized:

1. To adopt, amend and repeal rules and regulations for controlling air pollution, only in accordance with recommendations of the Council (§ 692 (1));

2. To collect and disseminate information relating to air pollution, its prevention and control (§ 692 (2));

3. To cooperate with other groups and agencies concerned with air pollution control (§ 692 (3));

4. To encourage or enter air pollution control studies, investigations, research, training, and demonstrations (§ 692 (4));

5. To consult with, make recommendations to, and encourage voluntary compliance with the purposes of this Act and Board rules and regulations by persons and groups (§ 692 (5) and (6));

6. On recommendation of the Council, to suspend the enforcement of the whole or any part of any rule or regulation (§ 692 (7));

7. To accept and administer Federal funds (§ 692 (8));

8. To delegate to the Department of Health the discharge of any of the duties set forth in 2 through 7, above (§ 692 (10)); and

9. Upon the recommendation of the Council, to issue orders (§ 692 (9)).

C. POLITICAL SUBDIVISIONS

The several counties and Baltimore City are encouraged to comply with requests for cooperation and assistance from statewide agencies (§ 697).

III. PROCEDURES

A. RULES AND REGULATIONS

1. Adoption, amendment and repeal:

   a. On the recommendation of the Council and after public hearing upon thirty days notice a majority of the Board may adopt, amend and repeal rules and regulations which become effective ninety days thereafter (§ 692 (1)).

   b. In formulating rules and regulations the Board and the Council may consult a council of technical advisors, who are appointed by the Council and serve without pay (§ 692 (1)).

2. Suspensions and exceptions

   a. On the recommendation of the Council, the Board shall suspend the enforcement of any rule, regulation, or part thereof as to any person when such enforcement would be inequitable, unreasonable, or would constitute an undue hardship, or if there is no economically practical means of compliance or no means has been proven effective in meeting the rule's requirements, or if the cost of compliance is out of proportion to the possible benefits, or if the physical layout of an established plant makes the installation of devices necessary for compliance impractical. Although wide discretion is to be exercised in weighing the equities and the advantages or disadvantages to any part of the State involved, no exceptions shall be granted when the air pollution in question constitutes a nuisance affecting public health (§ 693 (a), (b), and (c)).

   b. Exceptions are for periods up to one year, but are renewable so long as any of the conditions noted in a. above exist. Exceptions may be granted on condition of the submission of periodic progress reports, if desired by the Board (§ 693 (d)).

   c. No exception relieves the recipient from any liability for nuisance (§ 693 (c)).

B. HEARINGS

1. When the Department determines that a violation of the Board's rules and regulations continues to exist, despite conference and persuasion, it may, in person or by certified mail, serve written notice of violation on the person offending requiring him to comply with the regulation within a reasonable, stated time or to appear before the Council at a time and place specified, not less than 20 days after the date of the notice (§ 698 (a)).

2. The accused violator may examine the evidence against him prior to the hearing, produce evidence of his own, and be represented by counsel. On the basis of the evidence presented at the hearing, the Council shall make binding recommendation to the Board either to grant an exception or to issue an order of compliance, with time allowed specified, and the Board shall enter the order if required and shall give notice thereof to affected parties (§ 698 (b)).

3. The Commissioner shall subpoena and compel the attendance of such witnesses and the production of such documents as either he or the accused violator may desire. County circuit courts or the Baltimore City Court may compel a notice of hearing or a subpoena to be obeyed. Testimony take at the hearing is under oath and recorded. The alleged violator may purchase copies of the record (§ 698 (c)).

4. Information relating to secret manufacturing methods may be withheld from any public hearing before the Council, and any such information discovered or disclosed in the enforcement of this article is to be kept confidential (§ 698 (d)).

C. INVESTIGATION

When discharging responsibilities under this Act, personnel designated by the Commissioner of the Department may, with the owner's consent, enter all property at reasonable times and may inquire into any fact deemed necessary for evaluation of the condition. If consent is refused, County Circuit Courts or the Baltimore City Court may order such right of entry, on terms it deems appropriate (§ 696).

D. ADMINISTRATIVE PROCEDURE ACT

The Administrative ProcedureAct shall apply to the above proceedings (§ 703).

IV. VIOLATIONS AND PENALTIES

A. There is no civil liability for a violation caused by a condition not proximately caused by the violator's negligence or willful misconduct (§ 699 (c)).

B. The penalty for violation of the rules and regulations of the Board, determined after hearing, and failure to take the required corrective action is a fine of not over $500, and not over $200 for each additional day of violation, beginning on the first day after the expiration of the time fixed for compliance. The Attorney General may recover such penalties in an action in a County Circuit Court or the Baltimore City Court or, with the concurrence of the Board, settle such action prior to entry of judgment. (Persons other than the State do not acquire actionable rights by virtue of this Act, nor do Board determinations create presumptions or fact findings that may benefit such persons.) (§§ 699 (a), (b) and 702).

C. In addition, the Board or Department, respectively, may bring an action for an injunction if measures for compliance are not taken in accordance with an order of the Board, or if the Department finds that a public health emergency exists by reason of air pollution. In such actions Board findings shall be prima facie evidence of facts found (§ 700).

V. SCOPE AND CONSTRUCTION

A. No suspension of or exception to a rule or regulation shall exempt any person from compliance with applicable city or county or local Board of Health rules or regulations (§ 693 (e)).

B. Municipal or county or local Board of Health ordinances or regulations not inconsistent with this Act or any rule or regulation promulgated pursuant to it are not superseded by it nor shall their enactment be precluded (§ 701).

C. If any part of this Act is declared unconstitutional, the remainder shall remain in effect (§ 705).

VI. REPEAL

This Act repeals Article 43, § 118 of the Annotated Code (title "Health," subtitle, "Noxious Fumes").

VII. EFFECTIVE DATE

Became effective June 1, 1963.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Massachusetts [1]

1. Air Pollution Control Act

I. GENERAL STATEMENT

Under the 1954 air pollution control act the Massachusetts State Department of Health is charged with advising municipal authorities in regard to atmospheric pollution. Subject to the approval of the State Department of Health, the local board of health or other municipal legal authority authorized to control atmospheric pollution may adopt and enforce reasonable rules and regulations for the control of such pollution. The pollution to be controlled includes but is not limited to the emission of smoke, particulate matter, soot, cinders, ashes, toxic and radioactive substances, fumes, vapors, gases, industrial odors and dusts as may arise within the bounds of the municipality and which constitutes a nuisance or danger to the public health, or impairs the public comfort and convenience (§ 31 C).

II. ADMINISTRATIVE ORGANIZATION

A. A board of health or other legal authority constituted for such purpose by vote of the town or city council has jurisdiction to adopt and enforce rules and regulations to control atmospheric pollution subject to the approval of the State Department of Health (§ 31 C).

B. The State Department of Health may adopt and amend regulations to prevent pollution or contamination of the atmosphere (§ 142 A).

C. POWERS AND DUTIES

1. Of the local control body (§ 31 C):

   a. To adopt and enforce reasonable rules and regulations;

   b. After notice, to hold a public hearing before adoption of rules and regulations.

2. Of the State Department of Health:

   a. To adopt and amend rules and regulations to prevent pollution or contamination of the atmosphere (§ 142 A).

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[1] Citations refer to Annotated Laws of Massachusetts C. 111 and 1961 Cumulative Supplement.

b. To approve rules and regulations promulgated by local control bodies (§ 31 C).

c. To advise local control bodies in all matters of atmospheric pollution (§ 31 C).

d. Upon request of a local control body and after a hearing of all interested parties, to assume joint jurisdiction to regulate or control the cause of atmospheric pollution arising in another town (§ 31 C).

III. VIOLATIONS AND PENALTIES

A. The supreme judicial or superior court may enforce the regulations established by the State Department of Health and restrain the use or occupation of premises until the regulations have been complied with (§ 142 A).

B. Any municipality, corporation or person which, after due notice, continues to violate any regulation regarding atmospheric pollution established by the State Department of Health is deemed guilty of a misdemeanor and upon conviction is subject to a fine of not less than $10 nor more than $50 for the first offense and not less than $20 nor more than $100 for every succeeding offense (§ 142 A).

C. Violation of any order, rule or regulation promulgated by a local control body under the provisions of this Act is punishable by a fine of not less than $50 nor more than $100 for the first offense. Each day or part thereof of violation constitutes a separate and succeeding offense (§ 31 C, as amended by Ch. 483, Laws 1963, approved June 18, 1963).

2. Air Pollution Control Districts

I. GENERAL STATEMENT

In 1960 the metropolitan air pollution control district, embracing Boston and vicinity, was established and provision was made for the forming of other districts on joint application of two or more contiguous political subdivisions. Air pollution in each district is controlled by the State Department of Health pursuant to regulations adopted for that purpose. The State is reimbursed by the subdivision in each district for expenditures made for control activities in it (§§ 142 B, 142 C).

II. ADMINISTRATIVE ORGANIZATION

A. FORMATION OF AIR POLLUTION CONTROL DISTRICTS

1. By Acts of 1960, c. 676, a metropolitan air pollution control district, consisting of Boston and contiguous towns, was established. Upon application, additional contiguous cities and towns may be admitted to this district by State Department of Health (§ 142 B).

2. Air pollution control districts are formed by two or more contiguous political subdivisions upon joint application to and approval by the State Department of Health (§ 142 C).

B. CONTROL OF AIR POLLUTION WITHIN DISTRICTS (§ 142 B)

The State Department of Health is charged with the control of the pollution of atmosphere within air pollution control districts.

C. POWERS AND DUTIES OF THE STATE DEPARTMENT OF HEALTH (§ 142 B):

1. After public hearing, to promulgate, amend, or repeal regulations.

2. To enter and inspect any property and stop and detain for inspection any motor vehicle in order to investigate any actual or suspected source of air pollution or ascertain compliance with any regulation. Trade secrets learned in the course of an inspection must be kept confidential upon request.

3. To order cessation or abatement of any violation of its regulations adopted pursuant to either § 142 A or § 142 B.

4. To maintain air sampling stations and devices, make or perform routine and special examinations, inspections, observations,

determinations, laboratory analyses, and surveys, maintain records, and perform any other acts it deems necessary.

D. FINANCING (§ 142 B)

The State is reimbursed for all expenditures for each district by the subdivisions of that district through local assessments based one-half on local assessed valuations and one-half on local population.

III. VIOLATIONS AND PENALTIES (§ 142 B)

Failure to comply with any order of the State Department of Health to stop or abate violation of any of its air pollution regulations is punishable by a fine of not less than 10 nor more than 50 dollars for each offense. Each day of violation constitutes a separate offense.

IV. RESTRAINT OF VIOLATIONS (§ 142 B)

Orders to stop or abate violation of any air pollution regulation of the State Department of Health may be enforced on petition of that department to the Superior Court, which has jurisdiction to restrain violations.

V. SCOPE AND CONSTRUCTION

A. § 142 B does not abrogate any of the powers or duties of any agency or political subdivision of the State.

B. Nothing in § 142 B or any regulation adopted thereunder relieves a person from responsibility or liability for any damages which may occur or for civil or criminal proceedings arising out of or as a result of any action of that person, regardless of any action of the State Department of Health, and persons other than that department do not acquire actionable rights by virtue of such action.

VI. REPEALED

Section 4 of Acts of 1960, c. 676, repealed effective October 3, 1961, the laws relating to local smoke control regulation in Springfield (Acts of 1900, c. 236), Worcester (Acts of 1921, c. 37), and North Adams (Acts of 1941, c. 526).

3. Tax Exemption for Pollution Control Devices

Any equipment, facility or device installed on or attached to real property for the purpose of abating or preventing air or water pollution is exempt from taxation (S.B. 377, approved May 26, 1961).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Michigan

1. Air Pollution Control Act

I. GENERAL STATEMENT

The Act creates a nine member air pollution control commission within the state department of health. The Commission is empowered to promulgate rules and regulations, issue orders, make inspections, and institute enforcement actions. The law provides for judicial review and penalties.

II. DEFINITIONS

A. "Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor or any combination thereof. (Sec. 2 (b)).

B. "Air pollution" means the presence in the outdoor atmosphere of air contaminants in quantities, of characteristics and under conditions and circumstances and of a duration which are injurious to human life or property or which unreasonably interfere with the enjoyment of life and property, and which are reasonably detrimental to plant and animal life in this state and excludes all aspects of employer-employee relationships as to health and safety hazards. Nothing in this act shall apply in any respect to motor vehicles. (Sec. 2 (c)).

C. "Air cleaning device" means any method, process or equipment which removes, reduces or renders less noxious air contaminants discharged into the atmosphere (Sec. 2 (d), added Sec. 1, Act No. 95, Public Acts of 1966).

III. AIR POLLUTION CONTROL COMMISSION

A. Composition and Organization

The Commission created within the state department of health has nine members. The three public members are the Commissioner of Health (Chairman), the director of conservation, and the director of agriculture. Public members may designate deputies to serve in their places. The six citizen members, who serve staggered six year terms, are: two representatives of industrial management, one of whom shall be a registered professional engineer trained and experienced in air pollution measurement and control; two representatives of local governing bodies, one of whom shall be a full time air pollution control officer; two representatives of the general public, one of whom shall be a licensed doctor of medical experience and competent in the toxicology of air contaminants. (Sec. 3 as amended, Sec. 1 Act. No. 95, Public Acts of 1966).

Members receive expenses, but no salary.

Six members of the Commission constitute a quorum. (Sec. 4).

B. Powers and Duties: (Sec. 5).

The Commission may

1. Promulgate rules and regulations for air pollution control.
2. Compel attendance of witnesses at proceedings of the Commission.
3. Make, modify or cancel orders.
4. Institute court proceedings to compel compliance with the law.
5. Require submission for approval plans of air cleaning devices and inspect the installation for compliance with the plans.
6. Enter and inspect any property at reasonable times and places pursuant to reasonable notice.
7. Conduct or cause to be conducted studies and research with respect to air pollution control, abatement or prevention.
8. Serve as the agency of the state for the receipt of moneys from the Federal government or other public or private agencies.

IV. PROCEDURE

A. Hearings

1. Public hearings may be held before any member of the Commission or their designated delegates or representatives. Persons designated to conduct the hearing are referees and must be disinterested persons and technically qualified. (Sec. 11(1)).
2. Interested parties, their attorneys, and the referee shall have the right to examine and cross-examine witnesses. (Sec. 11(3)).
3. The record made in the hearing before the referee shall be submitted to and reviewed by the Commission and a hearing held thereon. (Sec. 12(1)).

B. Rules and Regulations

1. A rule or regulation requires a vote of approval in writing of not less than 6 members of the Commission. (Sec. 7(1)).

2. A public hearing shall be held before rules and regulations are adopted. Such hearing must be in accordance with provisions of the state administrative procedure law.

3. Any rule or regulation may differ in its terms and provisions as between particular types, characteristics, quantities and conditions and circumstances of air pollution and the duration; as between particular air pollution sources; and as between particular areas of the state. (Sec. 7(3)).

C. Enforcement

1. The Commission shall investigate complaints and suspected violations. Where a violation is found, the Commission shall endeavor to the fullest extent possible to effect compliance by conference, conciliation and persuasion. (Sec. 8).

2. In case of failure to correct violations by conference, conciliation and persuasion, the Commission shall issue and serve upon the alleged violator a written notice, together with a copy of the complaint, specifying the violation, and shall require the alleged violator to answer the complaint at a public hearing. (Sec. 9).

3. The respondent to the complaint may file a written answer and appear at the hearing in person or by representative, with or without counsel, and submit testimony, or do both. At the request of the respondent, the Commission shall subpoena such witnesses as the respondent may reasonably designate and require the production for examination of any book or paper relating to the matter under investigation at a hearing. (Sec. 10(1) and (2)).

4. Testimony taken at a hearing shall be under oath and recorded. (Sec. 10(3)).

5. Where the Commission concludes that the record substantiates a violation, the Commission shall make a final determination containing a statement of the violation found to exist and shall order correction within a reasonable time. (Sec. 13).

D. Emergency Powers

When the Commissioner of health finds that any person is discharging or causing to be discharged into the atmosphere directly or indirectly any air contaminant constituting an immediate and serious danger to the health of the people and it appears prejudicial to the interests of the people to delay action, the Commissioner of health shall notify the person by written notice that he must discontinue immediately the air pollution. (Sec. 14).

E. Variances

1. The Commission shall grant a variance to any person who shows that compliance would constitute an undue hardship and would be out of proportion to the benefits to be obtained. A variance shall not be granted where the person seeking the variance is causing air pollution which is injurious to public health. Any variance granted shall not be construed as relief from liability for the Commission or maintenance of a nuisance. (Secs. 19 and 21).

2. Variances shall be granted for a period not exceeding one year but may be continued from year to year. (Sec. 22).

F. Confidential Information

Any information relating to secret processes, or methods of manufacture, or production obtained in the course of any inspection, investigation, hearing, or report shall be kept confidential. (Secs. 5(i), 11(4), 11(7), 15).

V. LOCAL POWERS

A. Nothing in the state law shall be deemed to invalidate existing local laws or prevent any political subdivision from adopting laws having requirements equal to or greater than the minimum applicable requirements of state law. (Sec. 26(1)).

B. When a political subdivision or enforcing official thereof fails to enforce properly the local laws which afford protection to the public equal to that provided by state law, the Commission, after consultation with the local official or governing body, may take such appropriate action as may be necessary to enforce applicable provisions of the state law. (Sec. 26(2)).

VI. JUDICIAL REVIEW

Final orders or determinations of the Commission may be reviewed de novo in the Circuit Court for the County of Ingham in chancery, or for the county in which the alleged violator resides, or for the county in which the alleged violation occurred. In such de novo review, the Commission shall have the burden of proving the correctness of its order or determination. (Sec. 13(1)).

VII. INJUNCITVE RELIEF AND PENALTIES

A. The Commission may bring any appropriate action, at law or in chancery, as may be necessary to carry out and enforce the law. (Sec. 17).

B. Any person who is found to have violated the law shall be liable for a penalty not to exceed the sum of $500 and an additional penalty of not toeexceed $100 for each day of violation, commencing on the first day after expiration of the time fixed by the Commission for taking corrective measures. (Sec. 18(1)).

VIII. SCOPE AND CONSTRUCTION

A. The civil liabilities imposed upon person violating the law shall not include any violation caused by an act of God, war, strike, riot, catastrophe or other condition as to which negligence or willful misconduct on the part of such person is not the proximate cause.

B. The purpose of the law is to provide additional and cumulative remedies to prevent and abate air pollution. Nothing in the law shall abridge or alter rights of action or remedies now or hereafter existing nor be construed as estopping individuals, counties, cities townships or villages or other governmental units from the exercise of their respective rights to suppress nuisances or to prevent or abate air pollution. (Sec. 24).

C. The law does not repeal any laws relating to air pollution which are not expressly repealed. (Sec. 25).

D. The final order or determination of the Commission shall not be used in evidence of presumptive air pollution in any suit filed by any person other than the Commission.

IX. EFFECTIVE DATE

The act is ordered to take immediate effect. Approved July 23, 1965.

2. Tax Exemption [1]

I. DEFINITIONS

Facility means machinery, equipment, structures, or any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution which if released would render the air harmful or inimical to the public health or to property within this state. It does not include an air conditioner, dust collector, fan or other similar facility for the benefit of personnel or of a business. (Sec. 1).

II. PROCEDURE

A. Application for a pollution control tax exemption certificate is filed with the state tax commission. (Sec. 2(1)).

B. Before issuing a certificate the tax commission seeks approval of the state health commissioner and gives notice in writing by certified mail to the department of revenue and to the assessor of the taxing unit in which the facility is located or to be located, and affords the applicant and assessor opportunity for a hearing. (Sec. 2(2)).

C. If the health commissioner finds that a facility is designed and operated primarily for control, capture and removal of pollutants from the air, and is suitable, reasonably adequate and meets the intent and purposes of the state air pollution control act, he notifies the tax commission which shall issue a certificate. (Sec. 3).

D. When the tax commission issues or denies a certificate, certified copies or notice of refusal shall be sent by certified mail to the applicant, the department of revenue, and the local tax assessor. (Sec. 5).

E. On notice by certified mail and opportunity for a hearing, the tax commission on its own initiative or on complaint of the health commissioner, the department of revenue, or the local tax assessor shall modify or revoke certificates whenever it appears that:

1. The certificate was obtained by fraud or misrepresentation.

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[1] Public Act 250, Laws 1965, p. 399 (H.B. 2276).

2. The holder has failed substantially to proceed with construction, installation or acquisition of a facility or to operate the facility for the purpose and degree of control specified in the certification.

3. The facility is no longer used for the primary purpose of pollution control. (Sec. 6).

F. A party aggrieved by the issuance or refusal to issue, revocation or modification of a certificate may appeal the finding or order of the tax commission as provided by law. (Sec. 7).

G. The tax commission may adopt such rules and regulations as necessary to administer the law. (Sec. 8).

III. EXEMPTION

A. For the period subsequent to the effective date of the certificate and continuing so long as the certificate is in force, a facility is exempt from real and personal property taxes and from sales and use taxes for tangible personal property which becomes affixed and made a structural part of the real estate of such facility. The industrial processing exemptions under the sales tax act (No. 167, Public Acts of 1933) and the use tax act (No. 94, Public Acts of 1937) are not affected by these provisions.

B. The certificate shall state the total acquisition cost of the facility entitled to exemption.(Sec. 4, Act No. 250, Public Acts of 1965, as amended Sec. 1, Act No. 270, Public Acts of 1966).

IV. SCOPE AND CONSTRUCTION

A. Tax exemption shall be reduced to the extent of any commercial or productive value derived from any materials captured or recovered by the facility. (Sec. 2 (2)).

B. The effective date of a certificate shall be the date of issue of the certificate.

C. When a certificate is revoked because obtained by fraud or misrepresentation, all taxes which would have been payable shall be immediately due and payable with interest and penalties. No statute of limitation shall operate in event of fraud or misrepresentation.

V. EFFECTIVE DATE

This law is ordered to take immediate effect. Approval July 21, 1965.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Minnesota [1]

The council or other governing body of each city in the State which now has or hereafter may have 20,000 and not more than 50,000 inhabitants is authorized to enact and provide penalties for the violation of ordinances to regulate the emission of dense smoke in the city (§ 461.07).

Such ordinances may define the meaning of dense smoke and declare the emission thereof to be a public nuisance and provide effective steps for its batement (§ 461.08).

Any city of the third class in the State is authorized, acting through its council, to regulate the emission of dense smoke from the smokestack of any locomotive, engine, stationary engine, or building within the limits of such city and to declare such emission of dense smoke to be a public nuisance and to provide for its summary abatement and in addition may impose a penalty not to exceed a fine of $700 or 90 days imprisonment (§ 461.09).

In 1957, § 144.12 was amended so as to authorize the State board of health to make regulations regarding atmospheric pollution which may be injurious or detrimental to public health. Such regulations have the force of law except insofar as they conflict with any statute or with the charter or ordinance of a city of the first class upon the subject. The board may require the taking out of licenses or permits to achieve its purpose of regulation. This statute became effective April 11, 1957 (§ 144.12 (14)).

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[1] Citations refer to Minnesota Statutes Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Mississippi [1]

"The governing authorities of municipalities have power to make all needful police regulations necessary for the preservation of good order and peace of the municipality and to prevent injury to, destruction of, or interference with public or private property; to regulate or prohibit any mill, laundry, or manufacturing plant from so operating whereby the soot, cinders or smoke therefrom . . . may do damage to or interference with the use or occupation of public or private property . . ." (§ 3374-124).

"The governing authorities of municipalities have the power to . . . regulate and prescribe the construction and building of chimneys, smoke-stacks and smoke and hot-air flues" (§ 3374-150).

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[1] Citations refer to Mississippi Code 1942 Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Missouri

Missouri Air Conservation Law [1]

I. GENERAL STATEMENT

This law creates the Air Conservation Commission of the State of Missouri and empowers the Commission to adopt rules and regulations, hold hearings, enter orders and represent the state in negotiations of interstate compacts. Provision is made for an executive secretary, judicial review, enforcement by penalties and injunctions, and for local and regional air pollution control programs.

II. DEFINITIONS

A. "Air contaminant" means any particulate matter of any gas or vapor or any combination thereof.

B. "Air contaminant source" means any and all sources of emission of air contaminants whether privately or publicly owned or operated.

C. "Air pollution" means the presence in the ambient air of one or more air contaminants in quantities, of characteristics and of a duration which directly and proximately cause or contribute to injury to human, plant, or animal life or health or to property or which unreasonably interfere with the enjoyment of life or use of property.

D. "Person" means any individual, partnership, co-partnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political subdivision, or any agency, board, department or bureau of the State, or any legal entity whatever which is recognized by the law as the subject of rights and duties.

III. AIR CONSERVATION COMMISSION OF THE STATE OF MISSOURI

A. Composition and Organization (Sec. 4).

The members of the Commission are the director of the Missouri division of health and six others to be appointed by the governor with the advice and consent of the senate. The members must be so selected as to represent industry, labor, agriculture, municipal or county government and the general public no more than three of the appointed members may belong to the same political party. Terms are for three years with no limitation on number of terms. Four members constitute a quorum. The governor designates the chairman.

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[1] Citations refer to Senate Bill 132, approved August 24, 1965. Missouri Session Laws, 1965, p. 495.

B. Powers and Duties

The Commission shall have the power or duty:

1. To adopt, promulgate, amend and repeal rules and regulations including regulation of use of equipment known to be a source of air contamination and establishment of maximum quantities of air contaminants that may be emitted from any air contaminant source. (Sec. 5.1.(1)).
2. To establish air quality standards. (Sec. 5.1.(2)).
3. To require persons engaged in operations which result in air pollution to file reports containing information relating to rate, period of emission and composition of effluent. (Sec. 5.1.(3)(a)).
4. To require submission of plans and specifications for approval. (Sec. 5.1.(3)(b)).
5. To hold hearings. (Sec. 5.1.(4)).
6. To enter orders to effectuate the purposes of the law. (Sec. 5.1.(5)).
7. To cause institution of legal proceedings to compel compliance. (Sec. 5.1.(6)).
8. To authorize any employee of the Commission to enter at at all reasonable times and upon reasonable notice in or upon private or public property for the purpose of inspection. (Sec. 5.1.(8)).
9. To settle or compromise any suit for recovery of a penalty or for compelling compliance with the provisions of any rule or regulation. (Sec. 5.1.(7)).
10. To retain, employ, provide for, and compensate such employees as may be necessary to carry out the law. (Sec. 5.1.(9)).
11. To secure necessary scientific, technical, administrative and operational services, including laboratory facilities. (Sec. 5.1.(10)).

12. To represent the state in all matters pertaining to interstate air pollution including negotiation of compacts. (Sec. 5.2.(7)).

13. Accept, receive and administer grants or other funds or gifts from public and private agencies including the federal government. (Sec. 5.2.(8)).

C. Jurisdictional Limitation

Nothing contained in the law shall be deemed to grant the Commission any jurisdiction or authority with respect to air pollution existing solely within commercial and industrial plants, works, or shops or to affect any aspect of employer-employee relationships as to health and safety hazards. (Sec. 5.3.).

IV. EXECUTIVE SECRETARY

A. The executive secretary shall be a full-time employee of the division of health and shall act as administrative agent to the Commission. (Sec. 4(4)).

B. Powers and Duties

The executive secretary shall have the following powers and duties:

1. To investigate complaints, issue orders and file formal complaints before the Commission. (Sec. 6(3)).

2. To receive and act upon reports, plans, and specifications provided for under the law. (Sec. 6(4)).

3. To receive petitions for variances and certificates of exemptions. (Sec. 6(5)).

V. PROCEDURE

A. Hearings

1. At any public hearing, all testimony shall be under oath and recorded stenographically.

2. A majority of the members conducting a hearing may issue notices of hearings and subpoenas. (Sec. 9(2)).

3. All hearings hsall be held before at least four members of the Commission. (Sec. 9(4)).

B. Rules and Regulations

1. No standard, rule or regulation shall be adopted except after a public hearing to be held after thirty days prior notice by public advertisement of the date, time, and place of the hearing and opportunity given to the public to be heard. (Sec. 7(1)).

2. Any standard, rule or regulation shall not be adopted until approved in writing by at least four members of the Commission. (Sec. 7(3)).

3. Any standard, rule or regulation may differ in its terms as between particular types and conditions of air pollution or of air contamination, as between particular air contaminant sources, and as between particular areas of the state. (Sec. 7(4)).

C. Enforcement

1. The executive secretary shall cause investigations to be made upon the request of the Commission or upon receipt of information concerning an alleged violation. If investigation discloses a violation, the executive secretary shall by conference, conciliation and persuasion, endeavor to eliminate the violation. (Secs. 8(1) and (2)).

2. In case of failure by conference, concilation and persuasion to correct a violation, the executive secretary may order abatement or file a formal complaint with the Commission requesting that the matter be set down for a hearing. Any person against whom the executive secretary issues an order may appeal the order and the appeal stays the enforcement of the order. (Sec. 8(3)).

3. When a matter is scheduled for a hearing, the petitioner on appeal or respondent to a formal complaint may file written arguments and may appear at the hearing in person or by representative, with or without counsel, and may make oral argument, offer testimony or cross-examine witnesses. (Sec. 8(4)).

4. After due consideration, the Commission shall enter a final order or determination and notify the petitioner or respondent in writing by certified or registered mail. (Sec. 8(6)).

5. Any final order or determination of the Commission shall be approved by at least four members. (Sec. 8(7)).

D. Emergency Provision

If the executive secretary finds that any lawful discharge of air contaminants creates an emergency endangering public health, safety, or welfare, the executive secretary, with written approval of the governor, shall order the discharge discontinued. (Sec. 8(8)).

E. Variances

1. Variances, for such period and under such conditions specified by the Commission, may be granted by the Commission if it is determined that compliance will result in an arbitrary and unreasonable taking of property or in the practical closing of any lawful business without sufficient corresponding benefit to the people. (Sec. 10(1)).

2. Any person seeking a variance shall do so by filing a petition with the executive secretary who shall investigate and make recommendation for disposition to the Commission. If the recommendation is against granting a variance, a hearing shall be held if requested. If the recommendation is favorable, the Commission may grant the variance without hearing; except that upon petition of any person aggrieved, a hearing shall be held. In any such hearing the burden of proof shall be on the person seeking a variance. (Sec. 10(4)).

F. Approval by Operation of Law

Upon the failure of the executive secretary to take action within 60 days after request for approval of plans and specifications, petition for variance or certificate of exemption or upon the failure of the Commission to enter a final order within 60 days after final argument in any hearing, the person seeking such action shall be entitled to treat such failure to act as a grant of the requested approval or a favorable finding in any hearing, as the case may be. (Sec. 11).

G. Confidential Information

1. No information relating to secret processes or methods of manufacture or production shall be disclosed at any public hearing or otherwise and all such information shall be kept confidential. (Sec. 9(5)).

2. Any member of the Commission or employee thereof who is convicted of willful disclosure or conspiracy to disclose confidential information to any person other than one entitled to the information under the Act is guilty of a felony and shall forfeit his appointment. (Secs. 9(5) and 14(2)).

VI. JUDICIAL REVIEW

All final orders or determinations of the Commission or the executive secretary shall be subject to judicial review. However, no judicial review shall be available unless and until all administrative remedies are exhausted.

VII. LOCAL POWERS

A. Any political subdivision of the state is empowered to enact and enforce ordinances to control air pollution which are consistent with the state law. (Sec. 13(1)).

B. Exemptions

1. Any political subdivision shall be exempt from the state law which provides for air pollution control by ordinance that complies with at least the minimum applicable requirements of state law. (Sec. 13(3)(1)).

2. The fact of such exemption shall be evidenced by a certificate of exemption issued by the Commission if it finds that a local law meets the requirements and is being enforced. (Sec. 13(3)(2)).

3. The laws of any political subdivision not applying for a certificate of exemption or which is denied a certificate of exemption are repealed. Provision is made for suspension and revocation of certificates of exemption where a local law is being enforced in a manner inconsistent with state law. (Sec. 13(3)(3) and 13(3)(4)).

C. Local Cooperation

1. Any political subdivision may enter into and perform with other political subdivisions of the state such contracts and agreements as they deem proper for establishing, planning, operation, and financing of air pollution programs. (Sec. 13(2)(1)).

2. Such agreements may provide for an agency to supervise and operate on an air pollution program and may prescribe its powers and duties and fix the compensation of the agency's members and employees. (Sec. 13(2)(2)).

VIII. INJUNCTIVE RELIEF AND PENALTIES

In the event the Commission determines that there is a violation, the Commission may cause to have instituted a civil action for injunctive relief or for a penalty not to exceed two hundred dollars per day. (Sec. 14(1)).

IX. SCOPE AND CONSTRUCTION

A. Existing civil or criminal remedies for any wrongful action which is a violation of any part of the law are not excluded by the act. (Sec. 15(1)).

B. Persons other than the state or the Commission do not acquire actionable rights by virtue of the act. (Sec. 15(2)).

C. The liabilities imposed for violation of the act are not imposed for any violation caused by an act of God, war, strike, riot or other catastrophe. (Sec. 14(3)).

D. Nothing in the law vests in the Commission any power with respect to the registration or licensing of any machine, equipment, device or other contri ance licensed by the state commission on atomic energy, the division of health, or the U. S. Atomic Energy Commission unless the use of operation thereof is a source of air contamination. (Sec. 16).

E. If any section, subsection, sentence or clause of the act is adjudged unconstitutional, such adjudication shall not affect the validity of the act as a whole or of any section, subsection, sentence or clause not adjudged unconstitutional. (Sec. 17).

X. EFFECTIVE DATEE

Approved August 24, 1965, effective October 18, 1965.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Montana

1. Air Pollution Control

Air pollution is the presence in the outdoor atmosphere of substances in quantities which are injurious to normal human, plant or animal life or to property which unreasonably and repeatedly interfere with the enjoyment of life and property; provided that all aspects of employer--employee relationship as to health and safety hazards are excluded.

The discharge into the outdoor atmosphere of substances in quantities which are injurious to normal human, plant or animal life or to property is a public nuisance.

The State Board of Health of the State of Montana is designated as the "Study and Research Agency" to accept, receive and administer grants or other funds or gifts on behalf of the State of Montana. (Senate Bill No. 219, approved March 10, 1965)

2. Smoke Abatement[1]

It is lawful for any county or incorporated city or town where injurious and unhealthy smoke and fumes exist, upon petition signed by at least 100 of the resident taxpayers of the county, city, or town, to make contracts with such persons or corporations as will, in the opinion of the board of county commissioners or city council best accomplish the purpose, for the abatement thereof and to issue and dispose of bonds for that purpose, subject to the limitations and conditions hereinafter provided (§§ 11-2501 and 11-2502).

An election, held upon proper notice, wherein the electors approve or disapprove the contract negotiated by the county, city or town and the bond issue necessary to carry it out is required (§§ 11-2504 and 11-2505).

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[1] Citations refer to Revised Codes of Montana 1947 Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Nebraska [1]

Cities having a population 150,000 inhabitants or more have power by ordinance to provide for the abatement of dense volumes of smoke (§ 14-102 (33)).

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[1] Citations refer to Revised Statutes of Nebraska 1943.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Nevada [1/]

The Nevada statute authorizes air pollution control by county governments and incorporated cities, and provides for cooperative agreements between them.

Within the boundaries of their counties and within the corporate limits of their cities the boards of county commissioners and governing body of each incorporated city are granted "the power and authority, by ordinance regularly enacted, to regulate, control and prohibit, as a public nuisance, the excessive emission of dense smoke and air pollution caused by excessive soot, cinders, fly ash, dust, noxious acids, fumes and gases" (§§ 244.361, 268.410).

The boards of county commissioners and the governing bodies of incorporated cities in the county are authorized to enter into cooperative agreements with each other for the joint use of county and city personnel, equipment and facilities, upon such terms and conditions and within such areas within the county as may be determined for the promotion and protection of the health of the inhabitants of the county and city through the regulations, control and prohibition of the excessive emission of dense smoke and air pollution (§ 277.070).

This Act became effective March 18, 1957.

1/ Citations refer to the Nevada Revised Statutes.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

New Hampshire [1]

1. Tax Exemption for Control Devices

New Hampshire provides for limited tax exemption (a percentage of the valuation of equipment effective in the control of air pollution) as determined by the Water Pollution Commission for "any treatment facility, device, appliance or installation (whether consisting of real or personal property or a combination of both) built, constructed or placed in operation by any person, firm or corporation in this State wholly or partly for the purpose of reducing, controlling, or eliminating any source of pollution" because of the "general public benefits resulting from the control of pollution in the surface waters or air of the State" (§ 149:5-a).

2. Auto Exhaust

Chapter 205, Laws of 1961, amended RSA 263:46, dealing with mufflers on motor vehicles, to require, among other things, that the engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of "excessive fumes, smoke, flame, gas, oil or fuel residue." (Effective Aug. 27, 1961).

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[1] Citations refer to New Hampshire Revised Statutes Annotated 1955.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

New Jersey [1]

I. GENERAL STATEMENT

The New Jersey "Air Pollution Control Act (1954)" created an Air Pollution Control Commission within the State Department of Health which was charged with the enforcement of regulations adopted by the commission for the purpose of controlling and prohibiting air pollution throughout the State (§ 26:2C-8-9).

"Air pollution" is defined as "the presence in the outdoor atmosphere of substances in quantities which are injurious to human, plant or animal life or to property or unreasonably interfere with the comfortable enjoyment of life and property throughout the State and in such territories of the State as shall be affected thereby and excludes all aspects of employer-employee relationship as to health and safety hazards" (§ 26:2C-2).

II. ADMINISTRATIVE ORGANIZATION

A. AIR POLLUTION CONTROL COMMISSION

1. Composition and organization

The Commission consists of 9 members, 3 of whom serve ex officio and are the State Commissioner of Health, the Commissioner of Labor and Industry, and the Secretary of Agriculture or a member of their respective departments designated by them, one citizen of the State representing the general public and 5 members appointed by the Governor with the advice and consent of the Senate from persons nominated by the New Jersey Health Officers Association, the New Jersey State Chamber of Commerce, the New Jersey Society of Professional Engineers, Inc., the New Jersey Manufacturers Association, and the New Jersey Section of the American Industrial Hygiene Association (§ 26:2C-3). A chairman and vice-chairman are elected annually by the commission from its membership (§ 26:2C-6). The appointed members of the Board serve for four years on staggered terms (§ 26:2C-4). All members serve without compensation but are reimbursed for expenses incurred (§ 26:2C-5).

Five members of the commission constitute a quorum to transact its business, except that any action to adopt, amend or repeal a code, rule or regulation must be by at least a majority vote of the entire commission (§ 26:2C-6, as amended by Ch. 215, Laws 1962, approved January 8, 1963).

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[1] Citations refer to New Jersey Statutes Annotated and 1961 Cumulative Annual Pocket Part.

2. Powers and duties

a. Employees

The commission has power to employ such employees as it may deem necessary (§ 26:2C-7).

b. Codes, rules, and regulations

The commission has power to formulate and promulgate, amend and repeal codes and rules and regulations controlling and prohibiting air pollution throughout the State but only after public hearing held after 30 days' prior notice thereof by public advertisement of the date, time and place of such hearing at which opportunity to be heard by the commission has been given to the public. No such code, rule or regulation, amendment or repeal may be effective, until 60 days after its adoption (§ 26:2C-8).

c. Hearings

Any public hearing required by the Act to be held before the commission is to be held before not less than three members of the commission designated by the chairman (§ 26:2C-8, as amended by Ch. 215, Laws 1962, approved January 8, 1963).

d. County Air Pollution Control Associations

The commission is directed to organize a county air pollution control association in each county in which it determines that the establishment of such association is advisable to assist it in carrying out the purposes of the Act (§ 26:2C-11). The duty of each county association is to study air pollution problems of the county (§ 26:2C-12). Members of the association shall be residents of the county and are appointed by commission to serve without compensation.

e. Submission of proposed local regulations to county association

The commission is required to submit to the county air pollution control association of the county affected for discussion and report all codes, rules or regulations of strictly local application before they are adopted (§ 26:2C-13).

B. STATE DEPARTMENT OF HEALTH

1. Powers and duties

The Department is directed to control air pollution in accordance with any code, rule or regulation promulgated by the commission and is empowered to:

a. Conduct and supervise research programs for the purpose of determining the causes, effects and hazards of air pollution.

b. Conduct and supervise State-wide programs of air pollution control education.

c. Require the registration of and the filing of reports by persons engaged in operations which may result in air pollution. Registration reports filed are privileged and not admissible in evidence in any court (Ch. 215, Laws 1962, approved Jan. 8, 1963).

d. Enter and inspect any building or place, except private residences, to investigate an actual or suspected source of air pollution and to ascertain compliance with any code, rules and regulations of the commission. Any information so obtained relating to secret processes or methods of manufacturing is to be kept confidential and is to be inadmissible in evidence in any court or proceeding except before the Department (Ch. 215, Laws 1963, approved Jan. 8, 1963).

e. Receive or initiate complaints of air pollution, hold hearings, and institute legal proceedings for the prevention of air pollution.

f. With the approval of the Governor, cooperate with, and receive money from the Federal government, the State government, or any county or municipal government or from private sources for the study and control of air pollution (§ 26:2C-9).

III. PROCEDURES

A. Whenever the Department has cause to believe that any person is violating any code, rule, or regulation promulgated by the Commission, a prompt investigation is made (§ 26:2C-14). No person shall obstruct the performance of the Department's duties nor refuse to permit its personnel to perform their duties by refusing them, upon proper identification and presentation of a written order of the Department, entrance to any premises at reasonable hours (Ch. 215, Laws 1962, § 5, approved Jan. 8, 1963).

B. 1. If inspection reveals that a violation exists, the Department may order such violation to cease and take steps necessary to enforce said order (§ 26:2C-14).

2. Where no code, rule or regulation has been promulgated which sets specific limits for emissions of the type discovered and alleged, no order to cease shall be issued until a preliminary hearing is held, upon not less than 15 days notice by the Department to all interested persons (§ 26:2C-14, as amended by Ch. 215, Laws 1962, approved Jan. 8, 1963).

C. Any person aggrieved by an order of the department shall, upon application made within 15 days after notice thereof, be entitled to a hearing before the department within 30 days after application and to at least 15 days notice of the hearing. Within 30 days after such hearing, the department shall issue an order modifying, approving, or disapproving its prior order and serve a copy of the new order on interested parties. The department may stay the operation of the original order pending final determination (Ch. 215, Laws 1962, § 9, approved Jan. 8, 1963).

D. Any hearing required by the act to be held before the department is held before the State Commissioner of Health, or a member of the department designated by him, who has power to subpoena witnesses and compel their attendance, administer oaths and require the production of any books or papers relating to any matter under investigation in any such hearing (§ 26:2C-17).

Testimony is under oath and recorded stenographically, but the strict rules of evidence do not apply (§ 26:2C-16).

E. Review of any final decision or action by the department or of the validity of any code, rule or regulation promulgated by the commission shall be by procedure in lieu of prerogative writs (§ 26:2C-20).

IV. VIOLATIONS AND PENALTIES

A. An order to cease violation must state the items in violation and provide a reasonable specified time within which the violation must cease. The responsible party shall make complying corrections within the specified time (§ 26:2C-14, as amended by Ch. 215, Laws 1962, approved Jan. 8, 1963).

B. If preventive or corrective measures are not taken in accordance with the order of the department, the department may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent further violation of the code, rule or regulation. A penalty of not less than $25 nor more than $500 may be recovered in such civil action or in a civil action by a summary proceeding under the penalty enforcement law. Each week of continued violation after expiration of the compliance period constitutes a separate offense (§ 26:2C-19, as amended by Ch. 215, Laws 1962, approved Jan. 8, 1963).

C. The department is authorized to compromise and settle any claim for a penalty under this section (26:2C-19, as amended by CH. 215, Laws 1962, approved Jan. 8, 1963).

V. SCOPE AND CONSTRUCTION

This Act shall not impair any existing civil or criminal remedy for any wrongful action which is a violation of any code, rule or regulation of the commission nor supersede existing or future ordinances or regulations of any municipality or county or board of health not inconsistent with this act, nor shall it affect in any manner the powers, duties and functions vested in the State Department of Health by other provisions of law (§ 26:2C-21-23).

VI. THIS ACT BECAME EFFECTIVE SEPTEMBER 16, 1954 (§ 26:2C-1 (noted)).

2. Interstate Sanitation Commission

Chapter 105, Laws of 1961, (The Interstate Air Pollution Control Act), constitutes agreement by the State of New Jersey to the expansion of the powers of the Interstate Sanitation Commission to include studies of interstate air pollution problems between New York and New Jersey.

This Act is substantially similar in import to legislation enacted in 1960 by the State of New York (see pages 193-195 of DIGEST). Under the terms of these statutes, they became operative with the effective date--September 8, 1961--of the New Jersey Act.

The consent of Congress to this change in the terms of the Interstate Compact establishing the Interstate Sanitation Commission (49 Stat. 932) was granted in 1956 by P. L. 946, 84th Congress, 2nd Session.

3. Motor Vehicle Pollution Control [1]

The Air Pollution Control Commission, after consultation with the Director of the Division of Motor Vehicles, shall have the power to formulate and promulgate, amend and repeal codes, rules and regulations establishing standards and requirements for control of air contaminants from motor vehicles. Any code, rule or regulation shall be applicable to such classification of motor vehicles as the Commission shall determine to be necessary to carry out the purposes of the Air Pollution Control Act. Any code, rule or regulation shall apply to such motor vehicles not earlier than 180 days following the date of adoption.

The codes, rules and regulations shall establish standards and requirements (1) for the control of air contaminants from motor vehicles manufactured with air pollution control devices, systems or engine modifications consistent with requirements of the Motor Vehicle Air Pollution Control Act (77 Stat. 392, 42 U.S.C. 1857). For vehicles not manufactured with pollution control devices, systems or engine modifications in accordance with the Motor Vehicle Control Act, the codes, rules and regulations shall establish standards and requirements for control of air contaminants which can reasonably be attained by properly functioning motor vehicles without the addition of any air pollution control devices, systems, or engine modifications.

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[1] Chapter 16, Laws 1966, supplementing the Air Pollution Control Act (1954)

4. Tax Exemption [1]

I. GENERAL STATEMENT

This act supplements the exemption provisions of the real and personal property taxation statutes. It provides an exemption from taxation for any equipment, facility or device constructed or installed before or after the effective date of the act which is used primarily for abating or preventing pollution of the atmosphere and which has been certified to be an air pollution abatement facility by the State Commissioner of Health.

II. PROCEDURE

A. The State Commissioner of Health, when requested, shall certify a facility as being an air pollution abatement facility whenever he finds the equipment, facility or device constructed or installed or to be constructed or installed, was designed primarily for the control or abatement of pollution of air and is suitable and reasonably adequate for such purpose.

B. The certificate shall contain information identifying the facilities and the cost thereof. It shall be in such form and in such detail as the commissioner shall prescribe.

C. The applicant shall receive the certificate and a copy shall be given to the assessor of the taxing district in which the facilities are located and have been installed.

D. The exemption becomes effective for the tax year following the year in which the certification has been granted and it remains effective during its use primarily for purposes of control or abatement of pollution.

E. Upon notice and opportunity for hearing, the certificate may be revoked whenever it appears that:

1. The certificate was obtained by fraud or misrepresentation;
2. The claimant for exemption has failed substantially to proceed with the construction, reconstruction, installation or acquisition of pollution control facilities;
3. The structure or equipment or both to which the certificate relates has ceased to be used for the primary purpose of pollution control and is being used for a different primary purpose;

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[1] Chapter 127, Laws 1966, supplementing Article 2 of Chapter 4 of Title 54 of the Revised Statutes of New Jersey (Secs. 54: 4-3.3 et seq. N.J.S.A.).

4. The claimant for exemption has so departed from the certified equipment, design and construction, that, in the opinion of the Commissioner, the primary purpose of the installation is no longer the prevention of pollution or the installation is not suitable and reasonably adequate for the purpose for which it was certified;

5. Performance of the equipment as installed is not, in the opinion of the Commissioner, suitable and reasonably adequate for the primary purpose for it was certified;

6. In lieu of revocation the Commissioner may modify the certificate in accordance with the facts presented.

7. A copy of the notice of revocation or modification of any certificate shall be forwarded to the assessor of the taxing district in which the equipment involved is located.

III. EFFECTIVE DATE

This act shall take effect immediately, Approved June 17, 1966.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

New Mexico [1]

Incorporated cities and towns are authorized to declare what shall be a nuisance and to abate the same and to impose fines upon parties who may create, continue or suffer nuisances to exist (§ 14-21-30).

Incorporated villages are authorized to prevent the presence within their limits of anything dangerous, offensive, unhealthy or indecent and to cause any nuisances to be abated (§ 14-23-1).

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[1] Citations refer to New Mexico Statutes 1953 Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

New York 1/

1. Air Pollution Control Board

I. GENERAL STATEMENT

In 1957 the State of New York created an Air Pollution Control Board within the State Department of Health for the purpose of controlling and abating existing and future air pollution in the interests of the public health and welfare (Title II, § 1268-1 (a); Title I, § 1266). This legislation was enacted as Article XII-A of the Public Health Law.

"Air pollution" is defined as "the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristics and of a duration which are injurious to human, plant or animal life or to property on which unreasonably interfere with the comfortable enjoyment of life and property throughout the State or throughout such areas of the State as shall be affected thereby; excluding, however, all conditions subject to the requirements of the labor law and industrial code." (Title I, § 1267-4) "Air contaminant" is defined as "a dust, fume, gas, mist, odor, smoke, vapor, pollen or any combination thereof" (Title I, § 1267-3). "Air contamination" is defined in § 1267-5 as meaning "the presence in the outdoor atmosphere of one or more air contaminants which contribute or which are likely to contribute to a condition of air pollution."

II. ADMINISTRATIVE ORGANIZATION

A. AIR POLLUTION CONTROL BOARD

1. Composition and organization

The Air Pollution Control Board within the Department of Health is composed of the following nine members: The commissioners of the departments of health, agriculture and markets, commerce, conservation, and labor or a deputy or other representative of each department designated by the Commissioner, and four members appointed by the Governor with the advice and consent of the Senate, one of whom shall be a representative of the medical profession, one of the engineering profession, one of industry and one of

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1/ Citations refer to McKinney's Consolidated Laws of New York Annotated, Book 44 - Public Health Law, and 1961 Cumulative Annual Pocket Part.

the political subdivisions of the State (Title II, § 1268-1). The Commissioner of Health is chairman of the Board (Title II, § 1269-1). The appointed members of the Board serve for four years on staggered terms (Title II, § 1269-1).

The Board must meet at least quarterly. Special meetings may be called by the chairman and must be called by him upon receipt of written request signed by two or more board members (Title II, § 1272).

Six members constitute a quorum to exercise code, rule, and regulation making responsibilities; to transact any other business, five members constitute a quorum (Title II, § 1272).

2. Technical, scientific, legal and other services

Technical, scientific, legal and other services shall be performed by departments or agencies of the State without additional compensation (Title II, § 1274).

3. Employees and advisers

The Board shall have the power to employ and compensate such other personnel as it shall determine necessary to carry out the provisions of Article XII-A and shall prescribe their powers and duties (Title II, § 1275).

4. Codes, rules and regulations

A code, rule or regulation or any amendment or repeal thereof shall be approved in writing by at least six members of the Board and not by any deputy or representative (Title II, § 1276-1).

A code, rule or regulation or any amendment or repeal thereof shall not be adopted until after a public hearing within the area of the State concerned (Title II, § 1276-2).

5. Powers and duties

a. General authority

The Board is authorized to promulgate, amend, and repeal codes, rules and regulations for controlling or prohibiting air pollution in such areas of the State as shall or may be affected by air pollution and to include in such code, rules or regulations a general provision for controlling air contamination as the phrase "air contamination" is defined in Section 1267-5. (Title II, Sec. 1271-1 (a)).

b. Establishing areas and degree of air pollution

The board has power to establish areas of the State and prescribe the following:

1. The degree of air pollution or contamination that may be allowed therein;

2. The extent to which air contaminants may be emitted to the air by any air contamination source;

3. Standards for the composition or use of fuels or energy sources in those types or classes of air contamination source which, in the boards opinion, would discharge air contaminants in contravention of applicable emission or air quality standards;

4. Requirements and standards for the approval of plans or specifications for air cleaning installations. (Title II, Sec. 1271-1 (b) as amended, Sec. 4 (b), Ch. 902, laws 1966).

c. Administrative powers

The Board shall have power to hold public hearings, conduct investigations, compel attendance of witnesses, receive such pertinent and relevant proof as it deems necessary, proper or desirable in order to effectively discharge its duties to control air pollution. (Title II, Sec. 1271-1 (c)).

d. Plans

The board shall prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and of any new air pollution recognizing varying requirements for different areas of the state. (As added, Sec. 5, Ch. 902, laws 1966).

e. Cooperation

The board shall encourage voluntary cooperation by all persons in controlling air pollution and contamination. (As added, Sec. 5, Ch. 902, laws 1966).

III. HEALTH COMMISSIONER

A. Enforcement Power

The Health Commissioner is authorized to enforce the codes, rules and regulations of the board. (Title III, Sec. 1277 as added, Sec. 9, Ch. 902, laws 1966).

B. Powers and Duties

The Commissioner shall have the following powers:

1. To enter and inspect any property, premise or place and to detain any motor vehicle to investigate either an actual or suspected source of air pollution or contamination or to ascertain compliance or non-compliance with any code, rule or regulation. (Sec. 1277 as added, Sec. 9, Ch. 902, laws 1966).

2. To conduct or cause to be conducted studies and research with respect to air pollution control, abatement or prevention. (Sec. 1277, as added, Sec. 9, Ch. 902, laws 1966).

3. To determine by means of field studies and sampling the degree of air pollution in the state. (Sec. 1277, as added, Sec. 9, Ch. 902, laws 1966).

4. Conduct programs of air pollution control education, including the preparation and distribution of information relating to air pollution control and to provide advisory technical consultation services to local communities. (Sec. 1277 as added, Sec. 9, Ch. 902, laws 1966).

5. To develop and conduct demonstration programs in cooperation with local communities. (Sec. 1277 as added, Sec. 9, Ch. 902, laws 1966).

6. To promote the establishment of local laboratory facilities, including essential instrumentation, and to provide facilities and staff for training personnel of local communities in the principles of air sanitation. (Sec. 1277 as added, Sec. 9, Ch. 902, laws 1966).

7. To serve as the state agent for money receipt from the federal government or other public or private agencies and to expend such monies after appropriation thereof for the purpose of air pollution control studies or research. (Sec. 1277 as added, Sec. 9, Ch. 902, laws 1966).

8. To consider for approval plans or specifications for air cleaning installations or any part thereof submitted pursuant to the rules of the board, and to inspect the installation for compliance with the plans or specifications. (Sec. 1277 as added, Sec. 9, Ch. 902, laws 1966).

9. To approve types of crankcase ventilating systems and air contaminant emission control systems pursuant to standards promulgated by the board, in accordance with the vehicle and traffic law. (Sec. 1277 as added, Sec. 9, Ch. 902, Laws 1966)

10. To do those things necessary, proper or desirable to enforce codes, rules or regulations promulgated under this law. (Sec. 1277, as added, Sec. 9, Ch. 902, Laws 1966)

11. To require immediate discontinuance of discharges into the atmosphere which he determines, after investigation, to constitute a danger to the health of the people and that it appears prejudicial to the interest of the state citizens to delay action. (Title III, Sec. 1284, as amended, Sec. 17, Laws 1966)

IV. PROCEDURES

A. Service of all processes of the Commissioner, except subpoenas, shall be in the same manner as a summons in civil action or by registered mail. (Title III, Sec. 1278-2, as amended, Sec. 10, Ch. 902, Laws 1966)

B. If the Commissioner has cause to believe that a violation of code, rule, or regulation has occurred, he shall cause a prompt investigation to be made. When such a violation has been shown to exist, the Commissioner shall have issued and served upon the alleged violator a written notice specifying the provision said to be in violation, the manner in which and the extent to which such person is said to violate, and he shall require such person to answer the complaint charges at a public hearing before the Commission with 15 days. (Title III, Sec. 1280, as amended, Sec. 11, 12, Ch. 902, Laws 1966)

C. The Commissioner or his delegate is authorized to hold hearings and to issue subpoenas requiring attendance and testimony of witnesses and the production of evidence relevant to matters involved at such hearings. The respondent may appear in person or by representative, with or without counsel, and may submit testimony, or may do both. In the case of contumacy or refusal to obey a subpoena, the supreme court shall have jurisdiction, upon the Commissioner's or delegate's application, to issue an order requiring obedience, and failure to comply with the order may be judged as contempt. (Title IV, Sec. 1277-1, 2, 1277-5, 1277-3, 1281, as amended, Sec. 13, Laws 1966)

D. After due consideration of statements and evidence, or, upon default in appearance of the respondent, the Commissioner may issue and enter a final order or make such final determination as he deems appropriate. The respondent shall be notified in writing by registered mail of the Commissioner's decision. (Title III, Sec. 1282, as amended, Sec. 14, Ch. 902, Laws 1966)

E. Any final order or determination or other final action by the Commissioner and the validity or reasonableness of any code, rule or regulation of the board, shall be subject to review as provided in Article 78 of the Civil Practice Act. (Title III, Sec. 1283-1, as amended, Sec. 15, Ch. 902, Laws 1966)

Petition may be made for relief from any code, rule or regulation of the board or from any determination or order or other action which shall have been taken by the Commissioner or by any person acting in the name of the board Commissioner. (Title III, Sec. 1283-2, as amended, Sec. 15, Laws 1966)

V. BOARD REVIEW

A. At the request of any aggrieved person, the board shall review the Commissioner's determinations or orders. The availability of a board review does not affect a person's right to seek review of a determination of the Commissioner under Article 78, Civil Practice Act. (Sec. 1283 (a), as added, Sec. 16, Ch. 902, Laws 1966)

B. Verified petitions for relief shall be filed with the board, specifying the material facts the petitioner relies on, the determination to be modified or reversed, the grounds for relief. Such petition may be made by any person or persons jointly or severally. (Sec. 1283 (a), as added, Sec. 10, Ch. 902, Laws 1966)

C. The review proceeding must be instituted within two months after service of the determination or order. The Commissioner and his alternate shall not be allowed to vote in such proceedings. (Sec. 1283 (a), as added, Sec. 16, Ch. 902, Laws 1966)

VI. VIOLATIONS AND PENALTIES

A. For failure to take such required measures within the time fixed a penalty not to exceed $1000 for each violation and not to exceed $200 for each day during which such violation continues may be imposed in a civil action. (Title V, Sec. 1286-1, as amended, Sec. 19, Ch. 902, Laws 1966)

B. For failure to take such required measures an action for an injunction must be brought by the Attorney General if the Commission so requests. (Title V, Sec. 1287, as amended, Sec. 20, Ch. 902, Laws 1966)

VII. SCOPE AND CONSTRUCTION

A. The provisions of Article XII-A (12-A) shall apply to all areas of the State. (Title VI, Sec. 1293)

B. The purpose of the article is to provide additional and cumulative remedies to prevent air pollution and not to abridge or alter rights of action or remedies now or hereafter existing (Title VI, § 1294, as amended by Sec. 22, Ch. 902, Laws 1966).

C. Persons other than the State shall not acquire actionable rights by virtue of this article. (Title VI, Sec. 1295)

D. Any local laws, ordinances or regulations of any governing body of a county, city, town or village which are not inconsistent with this article or with any code, rule or regulation which shall be promulgated pursuant to this article shall not be superseded by it, and nothing in this article or in any code, rule or regulation which shall be promulgated pursuant to this article shall preclude the right of any governing body of a county, city, town or village to adopt local laws, ordinances or regulations which are not inconsistent with this article or with any code, rule or regulation which shall be promulgated pursuant to this article provided, however, that the exercise of such right by a county shall relate only to the area thereof outside any city, village or area of any town outside the village or villages therein during such time as such city, village or town has local laws, ordinances or regulations consistent with this article or with any code, rule or regulation which shall be promulgated pursuant to this article. Any local laws, ordinances or regulations of a county, city, town or village which comply with at least the minimum applicable requirements set forth in any code, rule or regulation promulgated pursuant to this article shall be deemed consistent with this article or with any such code, rule or regulation. (Added by Sec. 1, Ch. 242, Laws 1964, approved, March 29, 1964).

VIII. EFFECTIVE DATE

The Act is effective July 1, 1957, except that the provisions of Article 12-A of the Public Health Law, as added by this act, insofar as they confer power upon the air pollution control board to adopt and promulgate codes, rules and regulations for prohibiting and controlling air pollution and to enforce compliance therewith become effective July 1, 1959. (Sec. 2, Air Pollution Control Act)

2. Interstate Sanitation Commission[1]

I. GENERAL STATEMENT

In 1960, the 1936 Act which established the Interstate Sanitation Commission was amended to extend the power of the Commission so as to enable it to engage in activities with respect to air pollution problems between New York and New Jersey. The Commission, which had been established as the result of a Tri-State Water Pollution Control Compact between New York, New Jersey, and Connecticut was given new powers and duties, subject to the enactment of substantially similar legislation by New Jersey. The primary effort of the Commission under this Act is to be directed to air contaminant solids, liquids, or gases which are toxic, disagreeable or irritant, or which are destructive (§ 9-b).

II. ADMINISTRATIVE ORGANIZATION

A. INTERSTATE SANITATION COMMISSION

1. Composition and organization

The Interstate Sanitation Commission consists of five commissioners from each state, each of whom is a resident voter of the State from which he is appointed (L. 1936, c.4, § 1, Art. II, § 1). Four New York Commissioners are appointed by the governor with the advice and consent of the Senate, with the commissioner of health serving as the fifth. The commissioners serve four year staggered terms without compensation (§ 1).

The Commission elects from its number a chairman and vice-chairman. A majority of its members from each State constitutes a quorum for the transaction of business, the exercise of any powers, or the performance of any duties, but no action is binding unless at least three members from each State vote in favor of it. It may meet at any time or place within the signatory States (§ 2).

A separate division of interstate air pollution, established within the Commission and governed solely by the commissioners from New York and New Jersey, maintains separate financial accounts to reflect its direct and allocated costs and expenses in accordance with an accounting system set up by the full Commission (§ 9-b).

2. Other services and funds

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[1] Unless otherwise designated, citations refer to sections in Laws of New York, 1936, Ch. 3 as amended by Laws of New York, 1960, Ch. 823 and Laws of New York, 1966, Ch. 902.

In carrying out its air pollution functions, the Commission makes use of the services, facilities and information of existing State, local and Federal agencies whenever feasible and available. It may accept moneys, property and other donations or gifts from any person, public, private or governmental, real or artificial.

3. Employees and Advisors

The Commission appoints and at its pleasure removes or discharges officers and legal, clerical, expert, and other assistants as it requires and it fixes and determines their duties, qualifications, and compensation (§ 2).

4. Rules and Regulations, Officers

The Commission adopts suitable by-laws and promulgates rules and regulations for its management and control. It may maintain one or more offices for the transaction of its business.

5. Powers and Duties[1]

In pursuing its air pollution functions, the Commission is authorized:

a. To conduct studies;

b. To undertake research, testing, and development;

c. To gather, exchange, and disseminate information and to cooperate in solving air pollution problems;

d. To take samplings and to trace sources of air pollutants;

e. To refer complaints to an appropriate enforcement agency or agencies of the States in which the sources are located and to which air pollutants are carried, along with such data and information as it may have obtained with respect to the nature, characteristics, source, path and effect of air pollutants;

f. Upon the basis of studies and research, whenever appropriate

(1) To make recommendations and reports to the governors and legislatures of the participating states (§ 9-b).

(2) To recommend to the legislatures, air pollution control agencies and municipalities of the states the establishment of specific control and enforcement measures which may be

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[1] The water pollution aspects of the Commission's powers and duties are omitted.

necessary to abate air pollution in one state which endangers the health and welfare of people in another state;

(3) To join in a requirement upon the U.S. Secretary of Health, Education, and Welfare that he convene a conference pursuant to the Federal Clean Air Act and to participate in such conference; and

(4) To recommend and assist in the establishment of air pollution monitoring systems and air pollution warning systems (§ 9-b, as amended, Laws 1966, Ch. 902, approved August 1, 1966).

III. SPECIAL PROVISIONS

A. TRADE SECRETS

No trade secret or secret process may be inquired into, whether with respect to one or more of the substances or one or more of the processes, operations, techniques or devices used in connection therewith. Wherever a trade secret or secret process is involved, activity is limited to identification of the device or facility from which the effluent discharged into the outer air derives, and the nature, rate and period of its emission.

B. INFORMATION OBTAINED

All information obtained from sampling, tracing, or other specific inquiry is confidential and except as may be essential for referring a complaint for enforcement and for any enforcement proceeding, may be disclosed or published only in such a way as will not identify a given substance, process, operation, technique or device with the physical location or identity of the source plant or facility, the product made or service performed, or the persons using the same.

C. COPY OF § 9-b

A printed copy of this section must be furnished on request to any person furnishing information to the Commission and, in case of an inquiry at a plant or facility, to the person then in charge thereof.

IV. EFFECTIVE DATE

The Act becomes effective when the State of New Jersey enacts legislation of substantially similar import and remains in effect so long as that legislation remains in force. Consent was given by the State of New Jersey to the expansion of the powers of the commission by Ch. 105, Laws of 1961 (The Interstate Air Pollution Control Act). Consent of New Jersey to expansion of Commission powers as enacted by New York on August 1, 1966 not yet granted as of printing of this publication.

3. Motor Vehicle Pollution Control

Every motor vehicle manufactured or assembled after June 20, 1963, and registered in the state is required to be equipped with a crankcase ventilating system approved by the Commissioner of Health in accordance with standards promulgated by the air pollution control board, for the purpose of reducing the emission of pollutants into the atmosphere. The system must be maintained in good working order in continued conformity with standards promulgated by the board (Sec. 28 (a) Vehicle and Traffic Law, as amended Sec. 2, Ch. 856 and Sec. 41, Ch. 902, Laws 1966).

Every motor vehicle known as a 1968 or subsequent model registered in the state shall be equipped with an air contaminant emission control system of a type approved by the Commissioner of Health in accordance with standards promulgated by the air pollution control commission. The system must be maintained in good working order in continued conformity with standards promulgated by the board. "Air contaminant control systems" is defined to include, but is not limited to, exhaust control systems and gasoline evaporation control systems, but does not include crankcase ventilating systems. (Sec. 28 (b) Vehicle and Traffic Law, as amended Sec. 3, Ch. 856 and Sec. 42, Ch. 902, Laws 1966)

The air pollution control board may exempt or partially exempt any type or class of motor vehicle for which no practical control systems have been developed or necessary (Sec. 28 (c) Vehicle and Traffic Law, added Sec. 42, Ch. 902, Laws 1966) In establishing standards and exemptions the board shall give due consideration to applicable federal laws and regulations. (Sec. 28 (d) Vehicle and Traffic Law, added Sec. 42, Ch. 902, Laws 1966)

The Commissioner of Motor Vehicles, after consultation with the air pollution control board, empowered to establish regulations for the inclusion of inspections for the control of emissions of any substance by vehicles or engines and inspections of equipment, systems, or design features to reduce such emission. These regulations are to be promulgated when the Commissioner determines that it is technologically feasible and economically practical to conduct inspections of new vehicles' engines which are required by the federal or state motor vehicle air pollution law or the rules and regulations issued pursuant thereto, to meet emission, engine, equipment, system or design standards. (Sec. 301 (c) Vehicle and Traffic Code, as added Sec. 1, Ch. 856, Laws 1966)

4. Tax Exemption

I. REAL PROPERTY TAXES AND SPECIAL LEVIES

Section 481 has been added to the Real Property Tax Law. It provides an exemption from taxation and special ad valorem levies for air pollution control facilities which were constructed or reconstructed in order to comply with the provisions of the Public Health Law and codes, rules, regulations, permits or orders issued pursuant to such law. The exemption applies to the increase in value of property by reason of the construction or reconstruction of the air pollution control facility.

A. Definition

"Air pollution control facilities" means facilities which remove, reduce, or render less noxious air contaminants emitted from air contamination sources (as defined in Sec. 1277 of the Public Health Law) from a point immediately preceding the point of such removal, reduction, or rendering to the point of discharge of air, meeting emission standards as established by the air pollution control board, but excluding such facilities installed primarily for salvaging materials which are usable in the manufacturing process or are marketable and excluding those facilities which rely for their efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emission.

B. Procedure

In order to be entitled to exemption the facilities must be certified by the Commissioner of Health pursuant to Sec. 1277 (a) of the Public Health Law. The exemption is applicable only to air pollution control facilities which were constructed or reconstructed after the effective date of the act (August 1, 1966). An exemption will be granted only upon application of the owner of the facility upon forms prescribed by the State Board of Health. The original of the application must be filed with assessor of the city, town, village or county having taxing powers, on or before the appropriate taxable status date. A copy of the application must be filed simultaneously with the State Board. If the assessor is satisfied that the facility is entitled to an exemption, he shall approve the application and he shall place the assessed value of any exemption granted on the portion of the assessment roles provided for property exempt from taxation. The facility shall be exempt from taxation and special ad valorem levies.

C. Limitations

Section 481 of the Real Property Law is applicable only to the assessment roles of a county, city, town or village which has adopted a local law or a school district which has adopted a resolution. Local legislative bodies are empowered to adopt and amend local laws providing an exemption from taxation of air pollution control facilities located within the county, city, town or village. In counties and towns adopting such local laws, the exemption shall apply to taxes and special levies imposed for county or part county and town or part town purposes, respectively. In cities and villages adopting such local laws, the exemption shall apply to taxes imposed for city or village purposes, respectively. In the case of school districts, where taxes imposed for city school district purposes are not levied by such school districts, the local law adopted by the city shall apply to taxes imposed for city school district purposes. A school district which levies school taxes acting through its governing body, is empowered to adopt and amend resolutions authorizing an exemption from taxation, for school purposes, of air pollution control facilities located within such school district, provided, however, that a local law providing for such exemption from taxation for school purposes is adopted by each city or town wholly or partly within the school district where the facilities are located (Real Property Law, Sec. 481, added by Sec. 40, Chapter 902, Laws 1966).

II. FRANCHISE TAX ON BUSINESS CORPORATIONS

Section 208 of the Tax Law has been amended to provide a deduction from entire net income for expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or improvement of air pollution control facilities (as defined in I. A. above). The deduction is allowed only with respect to depreciable tangible property located in the state and used in the taxpayer's trade or business, the construction, reconstruction, erection or improvement expenditures for which have been initiated on or after January 1, 1966. The air pollution control facilities must also have been certified by the Commissioner of Health as complying with the applicable provisions of the Public Health Law, the State Sanitary Code and regulations, permits or orders issued thereunder.

After expenditures for such air pollution control facility have been deducted if within ten years from the end of the taxable year in which the deductions were allowed the property or any part thereof is used for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable, the taxpayer must report such change in use in its report for the first taxable year during which it occurs and the tax commissioner may recompute the tax for the year or years for which such deduction was allowed and may assess additional tax. Where a deduction has been allowed on the basis of a temporary certificate of compliance, the tax may be recomputed and additional tax assessed if the taxpayer has failed to obtain a permanent certificate of compliance upon completion of the facilities (Sec. 208 (9) (g) as added Chapter 178, Laws 1965 as amended Secs. 27, 28, 29, Chapter 902, Laws 1966).

III. INCOME TAX

Section 612 of the Tax Law has been amended to provide for the subtraction from adjusted gross income of expenditures paid or incurred for the construction, reconstruction, erection or improvement of air pollution control facilities. The definitions, requirements and limitations follow those described in II. above (Sec. 612, Tax Law as added Chapter 178, Laws 1965, as amended Secs. 30, 31, 32, 33, Chapter 902, Laws 1966).

Section 706 of the Tax Law has been amended to provide for an unincorporated business deduction of expenditures paid or incurred for the construction, reconstruction, erection or improvement of air pollution control facilities. The definitions, requirements and limitations follow those described in II. above (Sec. 706 Tax Law, as added Chapter 178, Laws 1965, as amended Secs. 35, 36, 37, 38, Chapter 902, Laws 1966).

5. State Grants to Municipalities

Effective April 1, 1962, state grants amounting to 50% of the first million dollars expended in the fiscal year are authorized for cities of over one million population with air pollution control programs conducted by agencies other than the city health department pursuant to standards prescribed by the Commissioner of Health, including but not limited to, costs incurred for pensions, Federal old age and survivors insurance and health insurance. (§ 608 (e), Public Health Law as amended by Ch. 737, L. 1962, and Ch. 427, L. 1965)

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

North Carolina [1]

1. Smoke Control by Cities

All cities have the power to regulate the emission of smoke within the city but no regulation relative to the emission of smoke shall extend to the acts of an employee or servant of a railroad company in making necessary smoke when stoking or operating a coal-burning locomotive (§ 160-200 (32)).

2. Public Nuisance Provisions

The governing body of a city or town or officer who may be designated for the purpose by the governing body has power summarily to remove, abate, or remedy, or cause to be removed, abated or remedied everything in the city limits, or within a mile of such limits, which is dangerous or prejudicial to the public health; and the expenses of such action shall be paid by the person in default, and if not paid, shall be a lien upon the land or premises where the trouble arose, and shall be collected as unpaid taxes (§ 160-234).

The board of commissioners of a town may pass laws for abating or preventing nuisances of any kind and for preserving the health of the citizens. Provided, however, it shall not be a nuisance for an employee or a servant of a railroad company to make necessary smoke when stoking or operating a coal-burning locomotive (§ 160-55).

Whenever and wherever a nuisance shall exist which in the opinion of the local health director is dangerous to the public health, it shall be his duty to notify in writing the person or persons responsible for its continuance, of the character of the nuisance and the means of abating it. The person or persons so notified shall proceed to abate the nuisance; provided that the person or persons so notified, within a reasonable time may appeal from the decision of the local health director to the local board of health. Upon receipt of notification of such appeal the local board of health shall grant a hearing, and if upon hearing of the matter, the local board of health finds that a nuisance does exist which is dangerous to the public health, then the person or persons responsible for the nuisance shall promptly proceed to abate it; provided that such person or persons may appeal from the decision of the local board of health to the superior court. If the person or persons responsible for the nuisance fails to abate it after notification by the local health director or after order to do so by the local board of health upon appeal to it or after order to do so by the superior court upon appeal to it, he shall be guilty of a misdemeanor.

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[1] Citations refer to General Statutes of North Carolina.

Whenever and wherever a nuisance shall exist which is dangerous to the public health and such nuisance is of a character as to require in the interest of the public health immediate abatement or discontinuance the local health director may bring a proceeding in the superior court of the county in which the nuisance exists for the abatement of such nuisance and the superior court may upon hearing and for good cause shown enjoin the continuance of the condition creating the nuisance, irrespective of all other remedies at law (§ 130-20).

Injuries remediable by the old writ of nuisance are subjects of action as other injuries, and in such action there may be judgment for damages, or for the removal of the nuisance or both (§ 1-539).

3. State Air Hygiene Program [1]

I. GENERAL STATEMENT

A. PURPOSE

This act authorizes the State Board of Health to establish a State Air Hygiene Program.

B. DEFINITION

"Air pollution" means "the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in such quantities and of such duration which are injurious to human, plant, or animal life, or property" (§ 130-222 (b)).

II. ADMINISTRATIVE ORGANIZATION

A. STATE BOARD OF HEALTH

The State Board of Health is empowered:

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[1] Citations refer to Ch. 130 of the North Carolina General Statutes, new Article 25 (§§ 130-221 to 130-226), added by Ch. 536, Laws 1963.

1. To create a State Air Hygiene Service (§ 130-223 (1));

2. To administer the State Air Hygiene Program (§ 130-223 (1));

3. To employ such personnel as necessary for the carrying out of the provisions of this article (§ 130-223 (2)); and

4. To expend State funds, Federal grants-in-aid, or donations made to it for the purpose of establishing a State Air Hygiene Service and otherwise carrying out the provisions of this article (§ 130-223 (3)).

B. STATE AIR HYGIENE SERVICE

The State Air Hygiene Service is authorized:

1. To advise, cooperate, and consult with other affected agencies and groups in matters relating to air pollution (§ 130-224 (1));

2. To collect and disseminate information relative to air pollution prevention and control (§ 130-224 (2));

3. To initiate, supervise and encourage research and studies of existing methods of examining and appraising air quality, and to develop procedures and standards for State-wide application (§ 130-224 (3)); and

4. To encourage and provide technical assistance to local agencies in handling air pollution problems (§ 130-224 (4) and (5)).

III. PROCEDURES

The State Health Director is authorized:

A. To enter at reasonable times and inspect any building or equipment for the purpose of investigating a known or suspected source of, or contributing factor to air pollution. Noncommercial private dwellings may not, however, be entered except with the consent of the occupants (§ 130-225 (1)); and

B. To require persons engaged in operations which may result in or contribute to air pollution to supply information when available about the pollution, e.g., composition of effluent sources of emission and rate of discharge; nevertheless, no person must disclose any secret methods or processes used by any manufacturing operation carried on, or supervised, by him (§ 130-225 (2)).

IV. SCOPE AND CONSTRUCTION

This article supplements all other laws relating to air hygiene or air pollution and shall not be construed to affect the authority of any municipality to adopt ordinances pursuant to any other provisions of law (§ 130-226).

V. EFFECTIVE DATE

Effective July 1, 1963.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

North Dakota 1/

A nuisance is defined, inter alia, as unlawfully doing an act or omitting to perform a duty, which act or omission annoys, injures or endangers the comfort, repose, health or safety of others (§ 42-0101). The remedies against a public nuisance are (1) indictment, (2) filing an information, (3) bringing a criminal action before a justice of the peace who has authority to bind defendant over to the district court, (4) civil action or, (5) abatement (§ 42-0107). The attorney general, his assistant, the state's attorney, or any citizen of the county where a common nuisance exists or is maintained may being an action in the name of the state to abate and perpetually enjoin the nuisance (§ 42-0201).

Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who wilfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor (§ 42-0115).

The remedies against a private nuisance are (1) a civil action or (2) abatement (§ 42-0103).

When it is necessary for the protection of the public health to abate or remove any nuisance, source of filth, or cause of sickness found on private property, the local board of health shall cause a notice to be served on the owner or occupant thereof requiring him to remove the same at his own expense within a reasonable time, not to exceed twenty-four hours. If the owner or occupant refuses or neglects to comply with such notice or if the nuisance, source of filth, or cause of sickness exists on the property of nonresident owners or upon property the onwers of which cannot be found, the board of health shall cause the nuisance, source of filth, or cause of sickness to be removed or destroyed under its direction, at the expense of the county, city, village, or township, as the case may be, but such expense shall be charged against the lots, pieces, or parcels of land upon which the work was done (§ 23-0504).

Whenever a local board of health deems it necessary for the preservation of the public health to enter any building within its jurisdiction to examine, destroy, remove, or prevent any nuisance, source of filth, or cause of sickness and is refused entrance into such building, any member of the board may make complaint under oath to a justice of the peace within the jurisdiction of the board, stating the facts in the case so far as he has knowledge thereof. The justice thereupon shall issue a warrant directed to the sheriff or other peace officer commanding him to destroy, remove, or prevent between the hours of sunrise and sunset, the nuisance, source of filth or cause of sickness, under the direction of such members of the local board of health as accompany him (§ 23-0506).

1/ Citations refer to North Dakota Century Code.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Ohio [1]

1. Research and Local Assistance

I. GENERAL STATEMENT

By statute approved June 10, 1957, section 3701.04.1 was added to Chapter 370 (Entitled "Department of Health") of the Ohio Revised Code relative to the conduct of air pollution research by the department of health and assisting political subdivisions in the abatement of air pollution.

"Atmospheric pollution" is defined as "the presence, in the out-of-door atmosphere, or substances which are injurious to humans, crops, or animals" (§ 3701.04.1).

II. ADMINISTRATION

The duties and powers set forth in the statute are assigned to the director of health (§ 3701.04.1).

III. POWERS AND DUTIES

The director of health is required to:

A. Maintain a laboratory to provide services necessary for the furtherance of air pollution abatement.

B. Develop methods of study of atmospheric pollution and conduct research within the state.

C. Advise, consult, and cooperate with other agencies of the State, the Federal government, other States, interstate agencies, political subdivisions, and industries in furtherance of atmospheric pollution prevention and abatement.

D. Encourage, participate in, or conduct studies and research relating to the prevention of atmospheric pollution.

E. Collect and disseminate information relating to atmospheric pollution and the prevention, control, and abatement thereof.

F. Accept and administer grants from the Federal government or other sources, public or private, for carrying out any of these functions (§ 3701.04.1).

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[1] Citations refer to Page's Ohio Revised Code Annotated.

2. Cooperative Control

The Board of County Commissioners and the legislative authority of any municipal corporation may enter mutual agreements whereby the latter shall provide the county with personnel, equipment and other services for the control of air pollution. Pursuant thereto, a municipal corporation may exercise any authority in behalf of the Board which the Board itself might so exercise. Effective September 27, 1963 (§ 307.151, S. Bill No. 223, Reg. Session 1963).

3. Tax Exemption

Upon application, notice, hearing (if requested), and approval, the Tax Commissioner may grant a revocable and modifiable pollution control certificate for a proposed air pollution control facility. This certificate shall entitle the owner of such facility to certain tax exemptions for that portion of the facility used exclusively for air pollution control. Appeal may be made from the decision of the Tax Commissioner to the Board of Tax Appeals, as provided in § 5707.02. The certificate shall continue in effect indefinitely unless revoked. Reasons for revocation are: Obtaining a certificate by fraud or misrepresentation; failure to build, install or acquire the proposed facility; ceasing to use the facility for the primary purpose of pollution control. If a certificate is revoked because obtained by fraud or misrepresentation, all taxes which ordinarily would have been payable shall be assessed, with maximum penalties applicable thereto.

No certified facility (or certified portion thereof) shall be considered: An improvement on the land on which it stands, for the purpose of real property taxation; as "used in business" for the purpose of personal taxation; as an asset in determining the value of its issued and outstanding shares or the value of its Ohio property for the purpose of the franchise tax. Further, no transfer of property to be incorporated into a certified facility shall be subject to sales or use taxes (§§ 5709.20-5709.26, H. Bill No. 26, Reg. Session 1963, effective October 14, 1963).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Oklahoma [1]

1. General Statement

Oklahoma does not have a general air pollution control statute nor has it enacted specific enabling legislation in the field. Local activity would therefore have to rely on public nuisance provisions. The Act of June 26, 1961, authorized the State Department of Health to encourage, participate in and conduct studies, investigations, training, demonstrations and research relating to the measurement and control of air pollution and its effects on health. The Department is also designated as the State agency to cooperate with the United States Public Health Service in the administration of air pollution control programs (S. Bill No. 320, Laws of 1961).

2. Public Nuisance Provisions

63 § 4, provides that the State Board of Health has the duty to take proceedings to have abated a nuisance calculated to affect injuriously the health of the public or any community.

"If any board of health or any county or city superintendent of public health in this State shall order the owner or occupant of any private premises, at his own expense, to remove any nuisance, source of filth, or cause of sickness found there, within twenty four hours, or within such other time as it shall be considered reasonable, and such owner or occupant refuses and neglects to comply with such order, he shall be fined therefor not more than twenty-five dollars for every day he knowingly violates such order. Such order shall be in writing and may be served personally on the owner, occupant, or his agent if he is known, and within the State. If the premises are unoccupied and the residence of the owner or agent is unknown, or is without the State, the board or county or city superintendent of public health may order the notice to be served by posting it on the premises and by advertising it in one or more newspapers" (63 § 25).

If any person is convicted on an indictment or information for a common nuisance to the public health, the court may order the nuisance to be removed, or destroyed, at the expense of the defendant, under the direction of the State, city, township or town board of health" (63 § 26).

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[1] Citations refer to Oklahoma Statutes Annotated.

Oklahoma--Continued

Title 21, Part V, entitled "Crimes Against Public Health and Safety," provides:

> "Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who wilfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor (21 § 1191)."

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Oregon [1]

I. GENERAL STATEMENT

A. SUMMARY

In 1961, the Oregon legislature enacted a comprehensive Air Pollution Control Act to be administered by the Sanitary Authority of Oregon (Sec. 4). Regulations issued by the Sanitary Authority under the 1959 Act (Sec. 449.030, O.R.S.) are in continued effect, insofar as they do not conflict with the later statute, until amended or new regulations are adopted, and in no event more than six months from the effective date of the statute (May 22, 1961).

It is the declared policy of the State to maintain such a reasonable degree of air purity that the least possible injury be done to human, plant or animal life and to property, and consistent with the economic and industrial well-being of the State. The control program shall be undertaken in a progressive manner and each of its successive objectives sought to be accomplished by a maximum of cooperation and conciliation (Sec. 1). The purpose of the Act is to control and abate existing air pollution and prevent new air pollution under a program consistent with the stated policy (Sec. 2).

B. DEFINITIONS

"Air contaminant" means a "dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof" (Sec. 3 (2)).

"Air pollution" means "the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristics and of a duration which are injurious to human, plant, or animal life or to property or which unreasonably interfere with enjoyment of life and property throughout the State or throughout such area of the State as shall be affected thereby" (Sec. 3 (3)).

"Air contamination" means "the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution" (Sec. 3 (4)).

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[1] All citations are to Ch. 426, Laws 1961, unless otherwise indicated. This Act (and amendments under Ch. 171, Laws 1963) is codified as sections 449.760-449.830 of Ch. 449, Oregon Revised Statutes.

"Area of the State" means "any city or county or portion thereof or other geographical area as may be designated by the Sanitary Authority" (Sec. 3 (7)).

II. ADMINISTRATIVE ORGANIZATION

A. SANITARY AUTHORITY--MEMBERSHIP

The powers and duties prescribed by the Act are vested in the Sanitary Authority (Sec. 4). The Authority is a division within the State Board of Health and is composed of seven members: The State Health Officer, the State Engineer, a member of the State Game Commission, a member of the State Fish Commission and three members appointed by the Governor from the general public for a four-year term (Sec. 449.015, 449.020, O.R.S.). The State Sanitary Engineer is Secretary of the Authority (Sec. 449.025, O.R.S.).

B. DUTIES AND POWERS

1. The State Sanitary Authority is directed to (Sec. 6):

   a. Develop a comprehensive plan for control or abatement of existing air pollution and for prevention of new air pollution, recognizing varying needs of different areas;

   b. Encourage cooperative activities and the formulation and execution of plans for air pollution control, air pollution agencies, associations, industries, etc.;

   c. Cooperate with Federal agencies, and receive and spend funds from Federal public or private agencies for air pollution control functions;

   d. Conduct studies, demonstrations, research, and educational programs relating to air pollution control and provide technical advisory services to local communities; and

   e. Enforce statutes relating to air pollution.

2. The authority has power to:

   a. Establish areas of the State and prescribe air purity standards for the degree of air contamination or pollution permitted therein. Such standards shall take into account such factors as: The quantity and nature of air contaminants; topography, wind and temperature conditions, possible chemical reactions in the atmosphere, the character of development of the area, the availability and economic feasibility of air-cleaning devices, effect on human health and enjoyment of life and danger to property from air contaminants, the effect on industrial operations of remedial measures and other applicable standards;

b. Establish air quality standards for the State or an area, establishing the maximum amount of air pollution permissible in various kinds of air contaminants from different sources or classes thereof, after public hearing before making any specific order concerning air pollution in an area if such standards can be established (Sec. 7). Notice of public hearing on air quality standards must be published prior to the hearing (Sec. 8). Oral and written objections may be submitted and the standards shall be established within 90 days after the hearing. Standards are deemed general regulations of the authority (Sec. 8);

c. Require the submission of plans for any air-cleaning device but cannot require any particular means to meet the standards (Sec. 9);

d. Adopt rules and regulations effective Statewide or in areas to control air pollution (Sec. 10 (1));

e. Conduct hearings, investigations, subpoena witnesses, etc., and make findings of fact and determinations (Sec. 10 (2));

f. Enforce penalties, except that no penal action may be taken against State, its agencies or local governments or their employees (Sec. 10 (4));

g. Compel compliance with rules by judicial proceedings (Sec. 10 (5));

h. Enter and inspect, during operating hours and after four hours' notice, when requested, any premises to investigate compliance. Trade process information obtained shall be kept confidential and not made part of hearing public record. Analysis reports of air samples taken on premises shall be provided to the person concerned (§ 449.800, O.R.S., as amended by Ch. 171, Laws 1963, approved April 29, 1963); and

i. Require production of pertinent books and papers (Sec. 10 (8)).

III. ENFORCEMENT PROCEDURES (Sec. 11)

A. INVESTIGATION

On complaint or on its own motion, the authority shall investigate any alleged violation of regulations and orders, and if it finds such violation exists, endeavor to eliminate the cause of air pollution by conference, conciliation and persuasion.

B. HEARING

If voluntary compliance is not obtained, the authority shall serve a complaint setting forth in detail the conditions complained of, together with notice of public hearing. The respondent may appear or file written answer. The burden of proof is on the authority, which shall, after due consideration of the evidence make an appropriate order or determination in accordance with O.R.S. Chapter 183.

C. JUDICIAL REVIEW

All orders, rules, regulations and determinations are subject to judicial review by any party to the original proceeding or by any person aggrieved thereby, within one year after they become final (Sec. 12).

D. INJUNCTIVE RELIEF

The authority may sue for an injunction to prevent violation of specific final orders and to compel compliance (Sec. 13).

E. EMERGENCY RELIEF

Whether or not administrative proceedings have begun, the Authority may bring an action to abate or restrain threatened or existing pollution when such pollution creates an emergency requiring immediate action to protect the public health, safety or welfare. No temporary restraining order, temporary injunction or abatement order shall be granted unless the defendant has an opportunity to be heard thereon pursuant to a show cause order served as a summons. Cases filed under these provisions shall be preferred on the civil docket except over cases given equal preference by statute (§ 449.820, O.R.S., as amended by Ch. 171, Laws 1963, approved April 29, 1963).

F. PENALTIES

Violation of any rule, regulation or final order of the authority is a misdemeanor, and each day of violation a separate offense. Refusal to produce books, papers or information is also a misdemeanor (Sec. 16).

No violation due to Act of God, war, strife, riot or other condition not proximately caused by negligence or willful misconduct shall be subject to any liability (Sec. 14).

IV. EXEMPTIONS AND VARIANCES

A. EXEMPTIONS

Agricultural operations, land clearing and grading, private outdoor fireplaces and barbecues, fires set or permitted by public officers for civil defense or fire fighting instruction, weed abatement or elimination of fire hazards are exempted from the Act (Sec. 5).

B. VARIANCES (Sec. 15)

1. The authority may grant specific variances from any requirement to specific persons or class of persons or specific air contamination sources, upon conditions necessary to protect the public health and welfare, if it finds strict compliance is inappropriate because of conditions beyond the control of the persons involved, or because of special circumstances which would render strict compliance unreasonable, burdensome or impractical, or would result in substantial curtailment or closing down of a plant or operation or because no alternative facility or method is available. Such variances may be limited in time.
2. The Authority may delegate power to grant variances to legislative bodies of governmental units in any area.
3. In considering variances, the granting authority shall weigh all equities involved and the advantages or disadvantages to the residents and the activity.
4. A variance may be revoked or modified by the grantor after a public hearing with not less than 10 days' notice to all persons likely to be affected by the revocation or modification.

V. LOCAL ACTION

A. GENERAL AUTHORITY

Any county or city, not withstanding charter limitations, may enact ordinances or resolutions with respect to air pollution which do not conflict with O.R.S. §§ 449.760 to 449.830 or rules and regulations promulgated thereunder (§ 449.830 (1), O.R.S., as amended by Ch. 171, Laws 1963, approved April 29, 1963).

B. COOPERATION

1. Any county or city, not withstanding charter limitations, through their governing bodies may enter into contracts and agreements with other counties and cities to establish and maintain an air pollution program (§ 449.830 (1), O.R.S.).

2. Counties and cities so contracting, not withstanding charter limitations, may also provide for a board or other such body for the supervision, management and operation of an air pollution program and may prescribe its powers and duties and fix the compensation of the members thereof (§ 449.830 (2), O.R.S., as amended by Ch. 171, Laws 1963, approved April 29, 1963).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Pennsylvania [1]

1. Air Pollution Control Act

I. GENERAL STATEMENT

In 1960, the legislature enacted the Air Pollution Control Act creating an Air Pollution Commission, establishing Regional Air Pollution Control Associations, and providing for a system of air pollution control regulation on the State and local levels. It declared as its policy the maintenance of such a reasonable degree of air purity as is technically feasible, economically reasonable, and necessary for the protection of normal health, general welfare, and property (35 §§ 4001, 4002).

II. ADMINISTRATIVE ORGANIZATION

A. AIR POLLUTION COMMISSION

1. Organization and composition

The Commission created within the Department of Health consists of the Secretaries of Health. Commerce, Labor and Industry, Mines and Mineral Industries, and Agriculture, a member of the general public, and industrial toxicologist with air contaminant experience, three State industry (manufacturing or public utility) representatives competent in matters of air pollution control, one of whom must be licensed engineer trained therein, and an additional licensed engineer so trained (35 § 4005 (a), (b), (c)). Public members are appointed by the Governor with the advice and consent of two-thirds of all the members of the Senate, serve four years, and recieve a per diem of $25 plus actual expenses. A chairman and vice-chairman are elected by the Commission biennially (35 §§ 4005 (a), (d), (e)).

2. Powers and duties (35 § 4005 (f))

a. Determine and certify regions and subregions.

b. Adopt, in accordance with the Administrative Agency Law, rules and regulations for the control of air pollution in regions, after reviewing Department studies thereon and comments of interested associations. Adopt regulations for the conduct of business.

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[1] Citations refer to Purdon's Pennsylvania Statutes Annotated and 1961 Cumulative Annual Pocket Part.

c. Hold at least six meetings per year at the call of the chairman.

d. Hear and determine in accordance with the Administrative Agency Law all complaints of alleged violations of its regulations referred to it by the Department and Associations.

e. Prescribe a complaint form which shall be made available to complainants through Associations.

f. Require measures for the minimization of air pollution, order compliance with its regulations, and stipulate a time for compliance with its orders.

g. Establish maximum permissible air contaminant quantities for various conditions in various areas.

B. DEPARTMENT OF HEALTH

1. Powers and Duties

In accordance with the policies of the Commission, the Department shall:

a. Inspect and investigate air pollution sources and ascertain compliance with Commission regulations, keeping confidential trade secrets, and promptly furnishing the suspected polluter with a duplicate analytical report of any samples taken in the course thereof; have access to and require production of pertinent books and papers; and receive and initiate complaints, forwarding them to the interested Association, or if more than one is interested, to the Commission.

b. Institute complaints, conduct testing and sampling programs, make observations of pollution causing conditions, make tests at contamination sources, and assess the degree of abatement required.

c. Upon request of the Commission secure court proceedings to enforce orders and act as Commission agent in public hearings; and enforce compliance with Commission regulations.

d. Recommend personnel job qualifications for new county and municipal air pollution control agencies.

e. Consider for approval plans and specifications for air pollution control methods submitted, require such submission at the request of the Commission and inspect installations or modifications for conformity with plans.

f. Conduct research on the nature and control of air contaminants; determine the degree of locally existent air pollution; develop and submit to the Commission a comprehensive State-wide air pollution control plan; encourage plans with control agencies and associations of municipalities whereby sources of contamination may be located and abated; and encourage voluntary air pollution control and reduction.

g. Conduct educational programs with respect to control, prevention, abatement, and reduction; conduct, with local communities, control demonstration programs; and provide technical consultative services to local communities and Associations.

h. Cooperate with Federal, interstate, or other State agencies and where appropriate, formulate compacts or agreements for submission to the Legislature; receive and expend Federal or other monies for research.

i. Do whatever else is necessary and proper for effective enforcement of the Act and regulations promulgated thereunder.

2. The Act does not limit Departmental powers under other laws, except where the exercise of such powers is in clear and direct conflict with a rule, regulation or order of the Commission. Subject to such exception the Department may, upon the approval of the Attorney General, petition a court of competent jurisdiction to order the abatement of any nuisance or condition detrimental to health. The court is not deprived of such jurisdiction even though such nuisance or condition is also subject to regulation or other action by the Commission. (35 Sec. 4011, as amended House Bill 1456, Approved January 24, 1966)

C. REGIONAL AIR POLLUTION CONTROL ASSOCIATIONS

1. Organization and Composition

In each region designated by the Commission there shall be an Association comprised of a representative of industry and of labor, a county commissioner of one of the encompassed counties, and a resident of each such county, all appointed by the

Governor. Associations are autonomous insofar as their business is concerned. (35 Sec. 4006 (a)(c))

2. Powers and Duties

   a. Review and comment upon proposed Commission local regulations within 90 days of receipt thereof.

   b. Suggest suitable local regulations to the Commission.

   c. Consider local complaints, attempting to resolve them voluntarily, and reporting thereon within six months. When voluntary resolution cannot be brought about, complaints shall be referred to the Commission for action. If a second complaint follows within 60 days of a report of a satisfactory disposition the complaint shall be forwarded forthwith.

   d. Cooperate with local persons to develop a regional control program.

   e. As necessary, avail itself of technical services and clerical assistance from the Department, enter into an agreement therewith for reimbursement of its expenses, and provide headquarters which, absent a cogent reason, shall be in the Department's regional office.

   f. Hold at least four meetings per year at the call of the Commission's Chairman.

   g. Submit to the Commission a copy of complaints received and action taken thereon.

D. POLITICAL SUBDIVISIONS

Local air pollution control ordinances not conflicting with the Act are specifically permitted. The procedures for abatement, reduction, prevention and control of air pollution set forth in this act do not apply to any political subdivision having an air pollution control agency approved by the Commission, except as to sources of air pollution existing within a political subdivision the effects of which extend its boundaries (35 Sec. 4012, as amended House Bill No. 1456, Approved January 24, 1966).

III. PROCEDURES

A. PUBLIC HEARINGS

Public hearings by the Commission or the Department acting in its behalf shall be held in a region before any rules or regulations are adopted for that region or subregion. Where it is necessary to adopt rules and regulations for more than one region, the Commission may hold one hearing in either of any two contiguous regions to be affected. Where it is necessary to adopt rules and regulations for any area which encompasses more than one region or parts of more than one region public hearings shall be held in the area concerned. Full copies of hearing transcripts shall be available to any party concerned at prevailing rates. (35 Sec. 4007, as amended House Bill No. 1456, Approved January 24, 1966)

B. APPEALS

Persons aggrieved by any order, decision, or determination of the Commission have a right to appeal as provided by the Administrative Agency Law. (35 Sec. 4007)

IV. VIOLATIONS AND PENALTIES

A. UNLAWFUL CONDUCT

Refusal or failure to comply with Commission regulations, participating in a violation of the act or regulations, or interfering in any manner with Department functions under the act is unlawful. (35 Sec. 4008, as amended House Bill No. 1456, Approved January 24, 1966)

B. PENALTIES

Any person engaged in unlawful conduct, upon conviction at summary proceeding, is fined. Conviction of a third or subsequent offense is a misdemeanor. Violations on separate days are separate offenses. (35 Sec. 4009)

C. INJUNCTION

In addition, the Commission may request the Attorney General to petition for injunctive relief. (35 Sec. 4010)

V. MISCELLANEOUS

A. The provisions of the Act are serverable. (35 Sec. 4014)

B. The Act became effective January 8, 1960. It was provided that regulations promulgated thereunder would not become effective until January 8, 1961. (35 Sec. 4005 (g))

2. Townships, Cities, Boroughs, Counties

I. The Board or township commissioners of a township of the first class has power to regulate the emission of smoke from chimneys, smokestacks and other sources except locomotive smokestacks (53 §§ 56502 and 56529).

II. Cities of the second and third class may by ordinance regulate the production or emission of smoke (53 §§ 23164 and 37403).

A. Cities of the second class may regulate by ordinance the production or emission of smoke from any source (53 § 23164).

B. Cities of the third class may by ordinance (53 § 37403):

1. Regulate the construction and inspection of fireplaces, chimneys, stoves, stovepipes, ovens, boilers, kettles, forges or nay apparatus used in any building, factory, or business;

2. Order the suppression or cleaning of the devices listed in a. above;

3. Regulate the production and emission of smoke or fly ash from any source except from railroad locomotives.

III. The corporate officers of a borough have power to regulate the emission of smoke from chimneys, smokestacks, and other sources, except from locomotive smokestacks (53 §§ 46202 and 46251).

IV. The board of commissioners of a county of the second class is authorized to regulate by resolution or ordinance the emission of smoke from any chimney, smokestack or other source within the county. The regulations may provide for collection of fees and for fines and penalties. That the board may provide by regulation for permits is implied by the authorization of the collection of fees therefor (16 § 5195).

The board may borrow, appropriate and expend money, may appoint enforcement officers and authorize the employment of other personnel and may acquire property, all for the purpose of regulating the emission of smoke (16 § 5196).

Violation of a resolution or ordinance constitutes a misdemeanor punishable by a fine not to exceed $100 and as prescribed by the resolution or ordinance. In default of payment the violator is to be imprisoned for a period not to exceed 30 days (16 § 5197).

Pennsylvania--Continued

The board may determine the effective date of any resolution or ordinance and in so doing shall take into consideration the availability of fuel burning devices suitable for burning high volatile bituminous coal smokelessly (16 § 5195).

DIGEST OF STATE AIR POLLUTION LAWS

Puerto Rico [1]

Anything which is injurious to the health, or indecent, or offensive to the senses or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance and the subject of an action. Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered (T. 32, § 2761).

Anything which is injurious to health, or is indecent or offensive to the senses or is an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons is a public nuisance. The emission of smoke from useful manufacturing enterprises except in municipalities of Class I is not a public nuisance unless it is shown by proof in court that the health of a considerable number of persons is injuriously affected thereby. But nothing in the Act prohibits the council of any municipality from passing ordinances to require manufacturing enterprises to use devices to prevent the unnecessary emission of smoke, cinders and soot to the injury and prejudice of the inhabitants in cities and towns (T. 33, § 1365).

A person who maintains or commits a nuisance or refuses to perform any legal duty relating to the removal of a public nuisance is guilty of a misdemeanor (T. 33, § 1365).

A person who violates the terms of a proclamation in relation to the public health issued by the Governor or who violates any regulations issued by the Secretary of Health is guilty of a misdemeanor (T. 33 § 1365).

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[1] Citations refer to laws of Puerto Rico Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Rhode Island [1]

1. Rhode Island Clean Air Act

I. GENERAL STATEMENT

The Clean Air Act, replacing the Smoke Abatement Act, designates the Health Department as the air pollution control agency. A five member advisory air pollution board is created to advise the health department director. Provision is made for pollution complaint investigation and hearing.

II. DEFINITIONS

1. "Air pollution" means the presence in the outdoor atmosphere of one or more of air contaminants in sufficient quantities, which either alone or in connection with other emissions, by reason of their concentration and duration may be injurious to human, plant or animal life, or cause damage to property or inconvenience to property owners, or create a disagreeable or unnatural odor, or obscure visibility, or which in any way interferes with the enjoyment of life and property. (Sec. 23-25-3)

2. "Air contaminant" is soot, cinders, ashes, any dust, fumes, gas, mist, smoke, vapor, odor, toxic or radio-active material, particulate matter, or any combination thereof. (Sec. 23-25-3)

3. "Person" means an individual, firm or co-partnership, association, syndicate, company, trust, corporation, department, bureau, agency, private or municipal corporation, or any other entity recognized by the law as the subject of rights and duties. (Sec. 23-25-3)

4. "Open fire" means any fire from which the products of combustion are emitted directly into the open air without passing through a stack or chimney. (Sec. 23-25-3)

III. RHODE ISLAND AIR POLLUTION CONTROL AGENCY

The Health Department is designated as the state air pollution control agency and the director of health is responsible to administer the law.

An advisory air pollution board of five members is created. The members shall be appointed by the governor for three-year terms, except that the initial appointees shall serve staggered terms. A vacancy shall be filled by gubernatorial appointment. No compensation shall be paid to members, but they shall receive necessary travel and other expenses incurred in duty performance.

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[1] Repeals and substitutes ch. 23-25, chapter 256, S.B. 317

The members shall choose a chairman and vice-chairman from among themselves and the director shall appoint a secretary.

The board will make suggestions to and advise the director concerning policies, plans and goals in relation to the administration of the law. At least annually, it shall make recommendations and submit them to the director. To properly perform this duty, the board is authorized to use the health department services. (Sec. 23-25-4)

IV. DIRECTOR OF HEALTH

A. Power and Duties

The director shall have the following powers and duties:

1. To exercise general supervision of the administration and enforcement of the law and all rules and regulations and orders promulgated thereunder. (Sec. 23-25-5 (a))

2. To develop comprehensive programs, for the prevention, control and abatement of new or existing pollution of the air resources of this state, and to adopt, modify or repeal and promulgate standards of air quality for the state or any region or district thereof. (Sec. 23-25-5 (b) (d))

3. To advise, consult and cooperate with the cities and towns and other agencies of the state, federal government, and other states and interstate agencies and with effective groups in industries, and to accept, receive and administer grants or other funds or gifts for the purpose of carrying out any of the functions of air pollution control including such monies given under any federal law to the state for air pollution control activities, surveys or program. (Sec. 23-25-5 (c) (i))

4. To encourage and conduct studies and research on air pollution and to collect and disseminate information thereon. (Sec. 23-25-5 (f))

5. To make, issue and amend rules and regulations consistent with the law for the prevention, control and abatement and limitation of air pollution, and the enforcement of orders issued hereunder. Such rules and regulations for the control of pollution need not be uniform throughout the state. Variations thereof may be based on considerations of population density, meteorological conditions, contaminant emissions, air quality, land development plans, and such other factors which may be relevant to the protection of the air resources of the state, and to issue,

modify, amend or revoke orders prohibiting or abating air pollution. In making the orders, the director shall consider all relevant factors including, but not limited to, population density, air pollution levels, the character and degree of injury to health or physical property and the economic and social necessity of the source of air pollution. (Sec. 23-25-5 (1) (h))

6. To enter at all reasonable times in or upon any private or public property, except private residences, and to detain and inspect any motor vehicle for the purpose of inspecting or investigating any condition which the director shall believe to be either an air pollution source, or in violation of any of the rules or regulations or orders promulgated hereunder. (Sec. 23-25-5 (g))

7. To hold such hearings, to issue notices of hearings, and subpoenas requiring the attendance of such witnesses and the production of such evidence and to administer such oaths and to take such testimony as he may deem necessary. (Sec. 23-25-5 (e))

8. To require the prior submission and approval of plans, specifications, and other data relative to the construction, installation and modification of air pollution control systems, devices or any parts thereof, and to inspect such installations and modifications to insure compliance with the approved plans, and to require the prior submission and approval of plans, specifications and other data relative to the construction, installation or modification of any machine, equipment, device, article or facility capable of becoming a source of air pollution, subject, however, to the promulgation of rules and regulations hereunder defining the classes and types of machines, equipment, devices, articles or facilities subject to such approval. (Sec. 23-25-5 (j) (k))

9. To consult the board on the policies and plans for the control and prevention of air pollution. (Sec. 23-25-5 (m))

10. To make or have made tests to determine the emission of air contaminants from premises, buildings or other places belonging to or controlled by any person, or to provide such information as he may request regarding such emission. The person owning or controlling the premises, building or other place to be tested shall provide the necessary holes and stack or duct work or such other sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for the

proper determination of the emission of air contaminants. The director may observe such tests and specify the testing method to be used by qualified personnel in accordance with good professional practice and should such test show that a violation of a rule or regulation made hereunder or any order of the director was not occurring the director shall pay one half of the cost of said tests. (Sec. 23-25-12)

V. PROCEDURE

A. Rules

In order that there shall be no lapse in the control of air pollution, existing laws, ordinances, rules and regulations of cities and towns shall become, on the effective date of this chapter, state rules and regulations, and shall be enforced by the director as if they were rules and regulations adopted by the director in accord with the provisions of this chapter. Such laws, ordinances, rules and regulations shall, however, be in effect only within the jurisdiction of the city or town in which they were originally enacted and for the period of not more than one year after the effective date of this act or until the director shall adopt rules and regulations hereunder for the abatement and control of air pollution, which ever period is shorter. (Sec. 23-25-19)

B. Complaint Investigation and Hearing

1. If the director has cause to believe that any person is violating this chapter or any rules or regulations promulgated under it, he shall launch an investigation and hearing. At the hearing the director shall receive evidence and hear witness in behalf of the accused violator. (Sec. 23-25-6)

2. Witnesses shall be served subpoenas as in civil cases in the superior court and shall be entitled to the same fees for travel and attendance as in that court. The superior court may, in cases of failure to obey the subpoena command, upon the director's application, issue a rule or order returnable in not less than two nor more than five days, directing such person to show cause why he should not be adjudged in contempt. (Sec. 23-25-7)

3. If a person is found to be causing air pollution, the director may enter an order requiring such person to adopt, use, or operate properly some practicable and reasonably available control system or device or means to prevent such pollution, taking due consideration of the rights and interests of involved parties. When one system or means is more practical than others, the order may direct that such sustem be employed. The order shall specify the time within which the system shall be adopted. However, the time limit may be extended in the director's discretion upon application by such person. (Sec. 23-25-8 (a))

4. If the director's order does not specify a system or means, the violator shall submit to the director a plan or statement describing the system or means he proposes to employ. If he should subsequently desire to change the system or means adopted, such person shall first file with the director a plan or statement describing the change. The director may then enter an approval order. A copy of each such order shall then be sent to the affected person by certified or registered mail. (Sec. 23-25-8 (b))

5. Any person adopting and properly operating a system or means to prevent air pollution in compliance with the director's order shall be deemed to have complied with all orders and determinations of the director. (Sec. 23-25-9)

C. Enforcement

1. All prosecutions for the violations of any order of the director shall be by complaint and warrant and shall be made in the district courts of the state. The director, without being required to enter into any recognizance or to give surety for cost, or the attorney general of his own motion, may institute such proceedings in the name of the state. It shall be the duty of the attorney general to conduct the prosecution of all such proceedings brought by the director. (Sec. 23-25-10 (a))

2. The director may obtain relief in equity or by prerogative writ. The superior court shall have the jurisdiction in equity to enforce the provisions of this chapter and any rule or regulation or order made by the director in conformity therewith. Proceedings under this section shall follow the course of equity and shall be instituted and prosecuted in the name of the director by the attorney general, but only upon the request of the director. (Sec. 23-25-10 (b))

3. No person shall be convicted or found liable in any criminal prosecution or at any other proceeding brought by or in behalf of the state, the director or the public to enjoin, suppress, prohibit, or punish air pollution unless he shall have violated a rule or regulation or order of the director, issued under the authority conferred upon him by this chapter; provided, however, that nothing in this section shall be held to affect any civil right action or remedy of any person at law or in equity. (Sec. 23-25-11)

4. Upon request of the director, any person having any air pollution control system shall keep such accurate records of operation as may be specified by the director and shall submit such records of operation and a plan and statement or true copies thereof, describing all such systems owned or controlled by him. Such statements, records, plans and descriptions shall be signed by said person or his agent. (Sec. 23-25-13)

D. Variances

1. Upon application and after the hearing, the director may suspend any rule in relation to any person who shows that such a regulation would constitute undue hardship upon him without bestowing a corresponding benefit or advantage. (Sec. 23-25-15 (a)).

2. The director shall give due recognition to the progress such person has made in eliminating or preventing air pollution. He shall consider the reasonableness of granting a variance condition on the person's affecting a partial abatement of the pollution or a progressive abatement thereof or such other circumstances as the director may deem reasonable. No variance shall be granted to any person applying therefor who is causing air pollution which creates a danger to public health or safety. (Sec. 23-25-15 (b)).

3. A variance shall be granted for such period of time, not exceeding one year, as the director shall specify. It may be continued from year to year. No variance shall be construed as to relieve the person receiving it from any liability imposed by law for the commission or maintenance of a nuisance nor shall there be any appeal from a denial of a variance. (Sec. 23-25-15 (c)).

E. Confidential Information

1. Plans and records of air pollution systems submitted tothe director shall not be open to inspection and their contents shall not be disclosed except in the enforcement of the law. Such statements, records, plans and descriptions may be open to public inspection when such person is a municipal corporation. (Sec. 23-25-13).

2. Any information relating to secret processes or methods of manufacture or production obtained during an investigation shall be kept secret. If samples of air or air contaminants are taken for analysis, a duplicate of the analytical report shall promptly be furnished to the person suspected of causing air pollution.

F. Emergency Procedure

If the director finds or has cause to believe that any person is committing a violation which is an immediate danger to public health or safety, he may order such person to cease such violation or alleged violation. Within twenty-four (24) hours after issuing the order, or such longer time as the alleged violator may designate, the director shall grant such person a hearing. Not more than twenty-four (24) hours after the conclusion of such hearing the director shall affirm, modify or set aside such order. (Sec. 23-25-16).

VI. VIOLATIONS AND PENALTIES

Any person who shall violate an order of the director shall be punished by a fine of not more than five hundred dollars ($5000.00) or by imprisonment for not more than thirty (30) days or by both such fine and imprisonment, and every person shall be deemed guilty of a separate and distinct offense for each day during such violation shall be repeated or continued. (Sec. 23-25-14).

VII. SCOPE AND CONSTRUCTION

Transfer of Municipal personnel to the state service. All full time personnel who are presently employed in the various municipal smoke inspection offices, and who have been so employed for a period of at least six (6) months at the time of the passage of this chapter, in positions which in the judgment of the director are comparable to those created hereunder in administering this chapter shall be granted permanent status in the state service after passing a non-competitive examination. Said employee shall receive at least the same rate of pay that he was formerly receiving from the municipality including allowance for anticipated increments and credit for accumulated sick leave and annual leave and shall suffer no loss in any other status or rights formerly provided by the municipality from which the employee was transferred. (Sec. 23-25-20).

VIII. EFFECTIVE DATE

January 1, 1967, Approved May 26, 1966.

2. Open Fire Burning Regulation

The health department director may prohibit the burning of any material in open fire by any person on public or semi-public refuse disposal facilities or at other central refuse disposal sites. He may also prohibit the burning of any material in an open fire by any person in connection with any salvage operation. (Sec. 23-25-18)

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

South Carolina

1. Air Pollution Control Act [1]

I. GENERAL STATEMENT

House Bill No. 1227 (1965) changed the name of the Water Pollution Control Authority to the "Pollution Control Authority." The Authority has jurisdiction to abate, control, and prevent the pollution of the waters and air of the State consistent with the protection of the health and physical property of the people, maximum employment and the full industrial development of the State. The Authority is empowered to adopt rules and regulations, hold hearings, enter orders, represent the State in formation of interstate compacts, and bring suit to compel compliance with its orders. Violation of Authority orders is punishable by fine, and injunctions may be imposed.

II. DEFINITIONS

A. "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, or vapor, or any combination thereof produced by processes other than natural. (Sec. 1).

B. "Source" is any and all points or origin of air contaminants whether privately or publicly owned or operated. (Sec. 1).

C. "Undesirable levels" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life or to property. (Sec. 1).

III. POLLUTION CONTROL AUTHORITY OF SOUTH CAROLINA

A. Composition and Organization

The Commission has ten members. Two members are named by the executive committee of the State Board of Health from within its membership to serve at the pleasure of the executive committee. The State Health Officer serves permanently as chairman. Seven members are appointed by the Governor: one from a list of three submitted by the Cotton Manufacturer's Association of South Carolina; one from a list of three submitted by the South Carolina Wildlife Federation; one from a list of three submitted by the

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[1] Citations preceded by "70-" refer to the Code of Laws of South Carolina 1962. Other citations are to House Bill No. 1227 (1965).

Municipal Association of South Carolina; one from a list of three submitted by the pulp and paper industry; one former actively engaged in farming; two from a list of three names from the ranks of labor submitted by the Commissioner of Labor. The seven gubernatorial appointees serve four year terms.

The appointive members receive per diem, travel, and subsistence while performing their duties. (Sec. 70-105).

B. Powers and Duties

The Authority shall have the power or duty:

1. To hold public hearings, compel attendance of witnesses, make findings of fact and determinations and assess penalties as are prescribed. (Sec. 70-110 (2)).
2. Institute legal proceedings to compel compliance with this law or its determinations and orders. (Secs. 70-110(4) and 5(A)(5)).
3. Issue, continue in effect, or deny permits for the prevention and abatement of pollution. (Sec. 70-110 (5)).
4. Conduct investigations. (Sec. 70-110 (6)).
5. Settle or compromise penalty suits. (Sec. 70-110 (7)).
6. Cooperate with the governments of the United States, other states or agencies in respect to pollution control matters or for formulation of interstate compacts or agreements. (Sec. 70-110 (9)).
7. Conduct studies and research. (Sec. 70-110 (10)).
8. Serve as the agency of the State for receipt of money from the Federal Government or other agencies and expend them. (Sec. 70-110 (13)).
9. To adopt, amend, and cancel rules and regulations to implement this law and to govern its procedures. (Sec. 70-108 as amended by Sec. 4).
10. To seek the control of air contaminants by all practical and economically feasible methods. (Sec. 5).
11. To prepare and develop a general plan for the proper control of the air resources of South Carolina. (Sec. 5(A)(1)).

12. To enter at all reasonable times in or upon any private or public property, except private residences or dwellings of four families or less, to inspect and investigate any condition which the Authority shall have reasonable cause to believe to be a source of air contaminant. (Sec. 5(A)(2)).

13. To enter such orders or determinations as may be necessary to effectuate the purposes of this act. (Sec. 5(A)(4)).

14. To have assistance and cooperation of other State agencies. (Sec. 5(A)(6)).

15. To encourage voluntary cooperation in restoration and preservation of a reasonable degree of purity of air. (Sec. 5(B)(1)).

16. To collect and disseminate information on air control.

C. Jurisdictional Limitation

Nothing contained in this act shall be deemed to grant to the Authority any jurisdiction or authority to make any rule, regulation or determination or to enter any order with respect to air conditions existing solely within the property boundaries of commercial and industrial plants, works or shops or to affect the relations between employers and employees with respect to or arising out of any air condition. (Sec. 5(C)).

IV. EXECUTIVE DIRECTOR

The executive director is selected by the Authority. He has authority and performs duties as directed by the Authority. (Sec. 70-106).

V. PROCEDURE

A. Hearings

1. A record, or summary thereof, shall be taken and filed with the Authority. If requested by any person concerned with the hearing, a full stenographic transcript, or actual recording shall be made and filed. (Sec. 70-127).

2. An Authority member, the executive director, or any employee or agent thereof authorized by the Authority may administer oaths, examine witnesses and issue notices of hearings and subpoenas. (Sec. 70-128).

3. Courts of Common Pleas may, on application of the Authority, issue an order enforcing a subpoena and punish as contempt any failure to obey such order. (Sec. 70-129).

B. Appeals

Any person may appeal an Authority order within 30 days after its filing. On appeal, further testimony may be taken. (Sec. 70-131).

C. Variances

Variances for up to one year may be granted upon a finding that compliance with any provision of this act, or any rule or regulation, final order or determination of the Authority, will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity, in either case without sufficient corresponding benefit or advantage to the people. Variances shall be conditioned on the submission of periodic progress reports. Variances may be extended from year to year. (Sec. 7).

D. Confidential Information

Any information relating to secret processes or methods or manufacture or production obtained by the Authority in the administration of this act shall be kept confidential. (Sec. 6).

VI. PENALTIES AND INJUNCTIONS

A. Willful violation of any final determination or order of the Authority is a misdemeanor, punishable by a fine of $500-$1000, imprisonment of up to one year, or both. Each day on which a violation occurs is a separate violation. (Sec. 70-133, 1964 suppl).

B. The Attorney General shall upon request of the Authority institute injunction proceedings or any other court action. (Sec. 70-132).

VII. SCOPE AND CONSTRUCTION

A. Causes of action arising from violations of the prohibitions of this Act inure solely to the State. It is not intended to create new or enlarge existing common law or statutory rights. A determination by the Authority that pollution exists, or a violation of any of the prohibitions of this Act, create no presumptions inuring to the benefit of any person other than the State. (Sec. 70-138).

B. Nothing contained in this Act shall be construed to postpone, stay, or abrogate the enforcement of State public health laws and regulations in respect to discharges causing actual or potential hazards to public health nor to prevent the State Board of Health from exercising its right to prevent or abate nuisances. (Sec. 70-139).

C. If any part of this Act is adjudged unconstitutional, such adjudiciation shall not affect the validity of the rest of the Act. (Sec. 9).

D. This act shall be the means within this State for the control of "air contaminants," "sources," or "undesirable levels" as defined herein. Nothing herein shall be construed to prevent private actions to abate nuisances under existing laws, and the granting of injunctive relief in such actions in the exercise of sound judicial discretion. (Sec. 10).

E. Liability does not extend to violations caused by an Act of God, war, strike, riot, or other catastrophe as to which negligence of the defendant was not the proximate cause. (Sec. 70-122).

VIII. EFFECTIVE DATE

Approved June 8, 1965.

2. Local Controls

In counties which have cities of 65,000 inhabitants or more it is unlawful for any manufacturer of acids or other distillations of a corrosive nature or of acrid odor, offensive or dangerous to human or plant life, to discharge into the air fumes from such manufacture without first treating such fumes to render them innocuous, inoffensive and harmless to human or plant life (§ 32-1851).

A violation of the provision is a misdemeanor and upon conviction punishment is in the discretion of the court (§ 32-1851).

The limit of liability in civil actions based on such violation is actual damages sustained by the plaintiff (§ 32-1852).

3. Tax Exemption

Treatment facilities or equipment of manufacturing plants which control water or air pollution are exempt from all property taxation. (Sec. 1, House Bill No. 2312, Ratification No. 1047, Laws 1966)

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

South Dakota [1]

Section 58.0201 provides:

"Each organized township in the State is a body corporate and has power:

"(6) When unincorporated town is within its limits:

"(d) To abate any nuisance found, within its corporate limits."

Section 45.0201 provides:

"Every municipality shall have power:

"(34) To declare what shall constitute a nuisance and prevent, abate, and remove the same.

"(35) To do what may be necessary or expedient for the promotion of health or the suppression of disease."

Section 27.2102 provides:

"The township board of health may examine into all nuisances . . . and causes of sickness within the township. Such board may make such rules or regulations respecting the same as it may judge necessary for the public health and safety of the inhabitants."

Chapter 37.47, which codifies the law of nuisance, authorizes three remedies:

1. Civil action;
2. Abatement; and
3. In the case of a public nuisance, indictment or information (§ 37.4707).

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[1] Citations refer to South Dakota Code of 1939.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Tennessee [1]

I. GENERAL STATEMENT

The 1959 "Air Pollution Control Act" authorized the establishment of an Air Pollution Control Service and defines air pollution as "the presence of materials, be it gaseous, liquid or solid, or a combination thereof, or physical conditions or phenomena in the atmosphere outside the confines of building and structures in such a manner or concentration as to create a nuisance, or to have detrimental effect on health, or on property and its utilization, but shall not include any aspects of employer-employee relationships" (§ 53-3402 (b)).

I. ADMINISTRATIVE ORGANIZATION

A. The State Department of Public Health is authorized to create an Air Pollution Control Service to administer the Act (§ 53-3403).

B. The Commissioner of Public Health is authorized to employ necessary personnel and to expend funds appropriated for the purposes of this Act, Federal grants-in-aid, and gifts made specifically for this purpose (§ 53-3403).

C. The Service is authorized to (§ 53-3404):

1. Advise, consult and cooperate with other State agencies, political subdivisions, industries, the Federal government and other interested groups on matters relating to air pollution.

2. Collect and disseminate information relating to air pollution.

3. Encourage and conduct studies, investigations and research on air pollution.

4. Encourage local agencies to handle air pollution problems to the best of their abilities.

5. Provide technical assistance and cooperation to local and regional control programs.

D. The Act authorizes entry to inspect all buildings, except those used exclusively for human habitation, and obstruction of such entry is a violation of the Act. The Act also authorizes a requirement that persons engaged in operations that may result in air pollution supply information as to the composition of the effluent, source of emission and rate of discharge. However, secret processes, formulae and methods may not be required (§ 53-3405).

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[1] Citations refer to Tennessee Code Annotated and 1960 Cumulative Supplement, as amended through the 1959 Regular Session.

E. Local political subdivisions are authorized to enter into contracts for joint operation for the control of air pollution within their jurisdiction (§ 53-3407).

F. This Act does not supersede ordinances or regulations of municipalities or counties nor keep them for adopting new ordinances or regulations consistent with this Act (§ 53-3406).

III. MISCELLANEOUS

Municipal corporations have full authority to prevent and remove nuisances (§ 6-202).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Texas

1. Air Pollution Control Act [1]

I. GENERAL STATEMENT

The "Clean Air Act of Texas" (1965) established a nine member Texas Air Control Board, and empowered it to adopt rules and regulations, to enter orders, to represent the State in negotiation of interstate compacts, and to institute suit for injunctive relief and/or penalty for violations of its orders. Judicial review de novo of any order is provided. The states purpose of the Act is to maintain purity of the air resources of the State consistent with the protection of the health and physical property of the people, maximum employment and the full industrial development of the State. The Board is directed to seek the accomplishment of this objective through control of air contaminants by all practical and economically feasible methods consistent with its powers and duties.

II. DEFINITIONS

A. "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, or vapor, or any combination thereof produced by processes other than natural.

B. "Source" is any and all points of origin of air contaminants, whether privately or publicly owned or operated.

C. "Undesirable levels" of air contaminants is the presence in the atmosphere of one or more of such items or combinations thereof in quantities and concentrations and of such characteristics, properties and duration as to appreciably injure human life beyond inconvenience or in quantities and concentrations and of such characteristics, properties and duration as to materially injure or interfere with the reasonable use of animal or plant life or property.

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[1] Citations are to the "Clean Air Act of Texas"--House Bill No. 362 (1965).

III. TEXAS AIR CONTROL BOARD

A. Composition and Organization

The Board has nine members. The six private members, who serve staggered six year terms, are: one registered professional engineer with ten years experience, one physician, one representative of private industry, one person experienced in municipal government, and two representatives of the general public. The three public members are: the State Commissioner of Health, the Executive Director of the Texas Industrial Commission, and the Executive Director of the Texas Animal Health Commission. (Secs. 3(A) and (D)).

Members receive no salary. Private members are paid twenty dollars ($20) per day while attending Board meetings and all members receive expenses. (Sec. 3(C)).

The Board elects a chairman and vice-chairman for two year terms. Six members constitute a quorum. (Sec. 3(G)).

The Board is authorized to request, contract for, and accept money from any Federal or State agency or any other legal entity. (Sec. 3(J)).

B. Powers and Duties

The Board shall have the power or duty:

1. To develop a general plan for the proper control of the air resources of Texas. (Sec. 4(A)(1)).
2. To adopt and promulgate rules and regulations. Such rules and regulations may not (except in the case of outdoor burning of refuse) specify any particular method to be used to reduce undesirable levels, nor the type, design, or method of installation of any equipment to be used to reduce undesirable levels, nor the type, design, method of installation or type of construction of any manufacturing processes or other kinds of equipment. (Sec. 4(A)(2)).
3. To enter at all reasonable times in or upon any private or public property except private residences or dwellings of not more than three families for the purpose of inspection and investigation of any condition which the Board shall have reasonable cause to believe to be a source of air contaminant. (Sec. 4(A)(3)).

4. To hold hearings upon complaints or upon petitions for variance and in connection therewith to issue subpoenas requiring the attendance of witnesses and the production of papers and documents related to such hearing. (Sec. 4(A)(4)).
5. To enter such orders or determinations as may be necessary to effectuate the purposes of the Act. (Sec. 4(A)(5)).
6. To cause to be instituted in a court of competent jurisdiction legal proceedings to compel compliance with any order entered by the Board. (Sec. 4(A)(6)).
7. To request and be entitled to receive the assistance of any State educational institution, experiment station, board, department or other State agency and the officials and employees thereof when it is deemed necessary or beneficial by the Board to carry out the provisions of the Act. (Sec. 4(A)(7)).
8. To employ personnel. (Sec. 4(B)(6)).
9. To encourage voluntary cooperation by persons, or affected groups in restoration and preservation of a reasonable degree of purity of air within the State. (Sec. 4(B)(1)).
10. To encourage and conduct studies, investigations and research concerning air control. (Sec. 4(B)(2)).
11. To collect and disseminate information on air control. (Sec. 4(B)(3)).
12. To advise, consult and cooperate with other agencies of the State, industries, other states and Federal Government, and with interested persons or groups in regard to matters of common interest in air control. (Sec. 4(B)(4)).
13. To represent the State of Texas in any and all matters pertaining to plans, procedures, or negotiations for interstate compacts. (Sec. 4(B)(5)).

C. Jurisdictional Limitation

The jurisdiction of the Board shall not extend to air conditions within plants, works, or shops, to employer-employee relations, or to matters subject to the jurisdiction of the Texas Radiation Control Agency or licensed by the Atomic Energy Commission. (Sec. 4(C)).

IV. EXECUTIVE SECRETARY

The Executive Secretary of the Board shall be an employee of the State Health Department designated by the Commissioner of Health after consultation with the Board. (Sec. 3(H)). The Executive Secretary shall recommend procedures for carrying out this Act, attend Board meetings but have no vote, conduct or arrange for inspections, and handle administration and exercise general supervision of the air pollution control program. (Sec. 5).

V. PROCEDURES

A. Public Hearings

1. At any public hearing, all testimony taken before the Board shall be under oath and recorded stenographically. The transcript so recorded shall be made available to any member of the public or to the respondent or party to a hearing on a complaint upon payment of the usual charges therefor. (Sec. 9(A)).

2. In such hearings, any member of the Board may examine witnesses. (Sec. 9(B)).

3. All hearings shall be had before at least five members of the Board. (Sec. 9(C)).

B. Rules

1. Rules, regulations, and amendments or repeals thereof must be approved in writing by at least six Board members after public hearing held upon thirty days notice. (Sec. 6(A)).

2. A rule may differ in its terms and provisions as between particular conditions, as between particular sources and as between particular areas of the State. (Sec. 6(B)).

3. Validity of rules may be determined by petition for a declaratory judgment. (Sec. 7).

C. Enforcement

1. The Executive Secretary must investigate upon request of the Board. He may investigate allegations of violations of the Act or of Board rules and regulations. (Sec. 8(A)).

2. If a violation is found, an effort shall be made to eliminate it by conference, conciliation and persuasion. (Sec. 8(B)).

3. Upon failure of conference, conciliation, and persuasion, the Board may cause service of notice and complaint, allowing the recipient at least thirty days notice of a hearing before the Board. (Sec. 8(B)).

4. The respondent to such a formal complaint may file a written answer thereto and may appear at such hearing in person or by representative, with or without counsel and may make oral argument, offer testimony and cross-examine any witnesses or take any combination of such actions. (Sec. 8(C)).

5. Following the hearing, the Board may make recommendations. If these are not complied with within the time allowed, the Board may enter a final order. (Sec. 8(D)).

6. In all proceedings before the Board, the burden of proof is upon the Executive Secretary. (Sec. 8(D)).

7. Any determination, recommendation, or order of the Board shall be approved in writing by at least six members. (Sec. 8(D)).

D. Variances

1. The Board may grant a variance on finding that compliance with the Act, rule or regulation, order, or determination will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity, in either case without sufficient corresponding benefit or advantage to the people. (Sec. 11(A)).

2. A variance shall continue for a period of time specified by the Board. A variance may be conditioned on the submission of periodic progress reports. A variance may be extended on recommendation of the Technical Secretary. (Sec. 11(C)).

3. A variance may be granted without a hearing. If the Executive Secretary recommends against the grant of a variance, a hearing shall be held at which the burden of proof shall be on the petitioner. (Sec. 11(D)).

4. Failure to act upon a petition for a variance within sixty days shall constitute grant of the variance. (Sec. 12(A)).

E. Confidential Information

Willful disclosure of confidential information by a Board member or employee is a felony, punishable by forfeiture of his appointment (Sec. 10) and by two to ten years imprisonment or fine of $200-$5000, or both. (Sec. 15(B)).

VI. FEES

No fees shall be charged by the Executive Secretary or the Board for the performance of any of their functions under this Act.

VII. JUDICIAL REVIEW

A. All orders or determinations of the Board are subject to review in the Texas District Courts. (Sec. 13).

B. The record before the Board shall be admissible in evidence and either the petitioner or the Board may introduce additional evidence. (Sec. 13). All appeals are de novo, all prior executive and administrative action being of no force and effect. The substantial evidence rule does not apply. (Sec. 14).

C. If the provision for de novo appeal is held invalid, the entire act shall be of no force and effect. (Sec. 14).

VIII. VIOLATIONS AND PENALTIES

A. If the Board determines that an order not the subject of judicial review is being violated, it may cause to have instituted a civil action for injunctive relief and/or for assessment of a penalty not to exceed $50 for each day the violation continues. It shall be the duty of the Attorney General to bring such suit at the request of the Board. (Sec. 15(A)).

B. Liabilities do not impose on violations caused by Act of God, war, strike, riot or other catastrophe. (Sec. 15(C)).

IX. SCOPE AND CONSTRUCTION

A. Rules and regulations of the Board create rights only in the State. The Act does not create new rights, or abrogate existing private rights. Findings of the Board inure only to the benefit of the State. (Sec. 16).

B. If any part of the Act is held unconstitutional, the rest of the Act is not affected. (Sec. 17).

C. Consistent State and local regulations remain in effect. (Sec. 18).

X. EFFECTIVE DATE

Approved June 18, 1965.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Utah [1]

Section 10-8-60 provides:

"They (all cities) may declare what shall be a nuisance, and abate the same, and impose fines upon persons who may create, continue or suffer nuisances to exist."

Section 10-6-101 provides:

"The mayor of cities of the first and second class (adopting the strong mayor form of government) may, with the approval of the board of commissioners, designate and regulate the abatement of injurious and noxious weeds, garbage, refuse or any unsightly or deleterious objects or structures, and may appoint a city inspector for the purpose of carrying out the provisions of this section."

Section 26-5-5 provides:

"Each local board of health shall cause every nuisance dangerous to health or human life to be abated. When complaint of such nuisance is made to it, it shall forthwith cause the matter to be investigated and shall determine whether or not the alleged nuisance is detrimental to the public health or the cause of any disease or mortality."

"Whenever a local board of health shall determine that a nuisance detrimental to health exists it shall in writing notify the occupant of the premises where the same may be found or, if unoccupied, the owner or agent thereof of such finding and shall order the abatement or removal of such nuisance within two days. If such nuisance is not abated or removed pursuant to such order, the board may summarily proceed to abate or remove the same, or it may cause an action to be brought in the name of the State by the county attorney for the abatement of such nuisance."

Section 76-43-1 provides:

"Whatever is dangerous to human life or health, and whatever renders ... air ... impure or unwholesome are declared to be nuisances and to be illegal, and every person, either owner, agent or occupant, having aided in creating or contributing to the same, or who may support, continue or retain any of them, is guilty of a misdemeanor."

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[1] Citations refer to Utah Code Annotated 1953.

Under this section the right to recover damages for injuries occasioned by fumes, gases, dust, smoke, foul air, and obnoxious odors, being cast upon one's property by another, in proper cases, is well established. But the rule of liability is not absolute and the law does not afford redress for every such discomfort or annoyance. Extreme rights in this regard cannot be enforced. An oil refinery reasonably operated in a location suitable therefor is not liable for inconvenience resulting to householder in neighborhood because of disagreeable odors.

Under section 26-15-4 (12) of the Public Health Code, the State Department of Health is authorized to establish and maintain chemical laboratory and engineering facilities to meet the needs for conducting field investigations and laboratory analyses in the study of occupational health hazards and air pollution.

Section 17-5-77 (as amended by H. Bill No. 5, Reg. Session 1963, approved March 9, 1963), provides:

"The board of county commissioners may pass ordinances to control air pollution."

Section 76-43-2.1 (added by H. Bill No. 4, Reg. Session 1963, approved March 14, 1963), provides:

"Any person including a private or municipal corporation or other governmental agency, who: Causes air pollution which means the presence in the atmosphere of one or more contaminants such as dust, fumes, gas, mist, odor, smoke vapor, or radioactive materials in quantities of characteristic and of duration such as to be injurious to human life or cause substantial economic injury to plant or animal life, or property, is guilty of a misdemeanor."

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Vermont [1]

T. 18 § 109 provides:

"In its discretion the (State Health Commission) may exercise all the powers and authority in each town and village, which is given to a local board of health. The commissioner may likewise exercise all the power and authority of a local health officer throughout the State."

T. 18 § 606 provides:

"The (local) health officer shall make sanitary inspections when and where he has reason to suspect that anything exists which may be detrimental to the public health. He may enter any house or other building or place for the purpose of making such inspections. By written order he shall direct the destruction or removal within a specified time of unhealthful conditions or causes of sickness . . ."

T. 18 § 609 provides:

"A person who neglects or refuses to comply with a written order of a local board of health or health officer issued under this chapter, when no other penalty is provided, shall be fined not more than $100 nor less than $5.00. Upon such neglect or refusal, the local board of health may prevent, remove or destroy any unhealthy conditions or causes of sickness, at the expense of the town it represents, and such expense may be recovered of the person whose legal duty it was to comply with such order."

T. 18 § 610 provides:

"A local board of health shall have power and authority to abate nuisances affecting the public health, destroy, prevent or remove unhealthful conditions and causes of sickness . . ."

T. 18 § 615 provides:

"A health officer shall not order the cessation or removal of conditions creating causes of sickness . . . except with the consent and approval of the selectmen of such town or the city council of such city . . ."

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[1] Citations refer to Vermont Statutes Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Virginia [1]

Air Pollution Control Act

I. GENERAL STATEMENT

Chapter 497, laws 1966, created a five member state air pollution control board, empowered to adopt rules and regulations, to grant local variances therefrom, to initiate and receive complaints, create local control districts, and to represent the state in negotiations. Proceedings to be heard de novo, failure to comply with regulations is punishable by fine.

II. DEFINITIONS

A. Board means the State Air Pollution Control Board, sometimes hereinafter referred to as "Board" or "State Board". (Sec. 1 (a))

B. "Air pollution" means the presence in the outdoor atmosphere of one or more substances put there by man or man-made devices in concentration sufficient to cause an unreasonable interference with human, plant or animal life or the reasonable use of property. (Sec. 1 (b))

C. "Owner" means the State, a county, sanitary district, municipality, a public or private institution, corporation, association, firm, or company organized or existing under the laws of this or any other state of country, person or individual, or group of persons or individuals, acting individually or as a group. (Sec. 1 (c))

III. VIRGINIA AIR POLLUTION CONTROL BOARD

A. Composition and Organization

The board consists of five members appointed by the governor and confirmed by the General Assembly for four year terms. The first appointees serve staggered terms.

Members are selected from able citizens of the state without regard for political affiliation. No officer, employee, or representative of any industry or political subdivision affected by the board's decisions shall be appointed.

Members receive no compensation but are paid $20 per day while attending meetings plus per diem expenses.

The board elects its own chairman and employ such people as it deems necessary.

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[1] Citations refer to chapter 497, House Bill 420, approved April 4, 1966

The board meets at least once every three months, and separate meetings may be called by the chairman or upon written request of any two members. Five days notice is given the members prior to any meetings.

The board keeps complete records of all proceedings a copy of which is open for public inspection. All rules and regulations are filed with the Secretary of State at least 30 days before date of effect.

The board makes, or has made, inspections and investigations and other things necessary to implement the law. (Sec. 2 - 7).

B. Powers and Duties

The board has the power or duty:

1. To control and regulate its internal affairs, conduct research programs in regard to cause, effects and hazards of air pollution and educate the populace in regard thereto, to cooperate with and receive money from federal and state governments and other sources, to develop a program for air pollution source study, abatement, control, to cooperate with various governmental agencies and private groups and industries. (Sec. 9 (a)).

2. To formulate, adopt, promulgate, amend and repeal rules and regulations in regard to abating, controlling, prohibiting air pollution in the state or any particularly affected area. Such rule, order, etc., requires public hearing with 30 day notice and becomes effective only after 60 days of its adoption. (Sec. 9 (b)).

3. To grant local variance from any fule or regulation by issuing an order to this effect after holding a hearing in the locality. (Sec. 9 (c)).

4. To initiate and receive complaints, hold hearings, enter orders, institute legal proceedings. (Sec. 9 (d)).

5. To consider all facts and circumstances in regard to the degree of injury to health, use of property, the activity's social and economical value and its suitability to the affected area, the practicality of eliminating the discharge. (Sec. 9 (e)).

6. To create local air pollution control districts. (Sec. 10 (a)).

7. To name technically qualified citizens to state advisory committees on air pollution. (Sec. 11).

8. To request owner, believed to cause or about to cause air pollution, to furnish certain plans, specifications, information. When samples are taken for analysis, a duplicate analytical report is to be furnished to person supplying sample. (Sec. 12)

9. To enter any establishment or upon any property to obtain information or conduct surveys or investigations. (Sec. 13)

IV. EXECUTIVE SECRETARY

The board is authorized to employ an executive secretary who shall devote his full time to his duties. He shall have those administrative powers conferred upon him by the board. (Sec. 5)

V. PROCEDURE

A. Local air pollution control districts.

1. Districts may be established on the board's discretion or by request of the governing bodies of the areas in question. A district may comprise any combination or parts of a city or county.

2. Each district shall have a local air pollution control committee. The members are appointed by the state board, which determines the number, from a list of recommended nominees. When two or more localities are involved, the members shall be apportioned among them. Any compensation or reimbursement of the members shall be borne by the locality or localities. (Sec. 10 (b))

3. All local ordinances, rules, regulations in regard to air pollution in these districts shall be superseded by the rules and regulations of the state board. (Sec. 10 (c))

4. Locality governing bodies may appropriate funds for local committee use. (Sec. 10 (d))

B. Public Rehearing

1. An aggrieved party may petition the board for a rehearing any time prior to the effective date of the rule, regulation, or order. (Sec. 15)

2. The board may determine that the issues raised by the petition have been adequately considered and confirm the previous rule without hearing. (Sec. 16)

3. If the board feels that further testimony is not necessary, they may reconsider and redetermine the original cause without setting a time and place for any further hearing. (Sec. 17)

4. The board may determine that a rehearing is necessary to determine the issues raised and order thereon and hear such additional evidence as may be offered on either side. Ten days notice shall be given the applicant before the hearing and to other interested persons. (Sec. 17)

5. A petition for a hearing or rehearings shall be considered denied by the board unless they take action upon it within 30 days. (Sec. 17).

C. Confidential Information

Any information as to secret processes, formulas or methods of manufacture or production shall not be disclosed in public hearing before the board, and shall be kept confidential. (Sec. 12).

VI. JUDICIAL REVIEW

A. All rules, regulations, orders or requirements are subject to review in the Circuit Court of the city of Richmond. (Sec. 18)

1. Such cases shall be brought by petition within 60 days after the date of the offending rule, regulation, etc., or within 30 days after the denial of an application for rehearing or of the rendition of the decision of the board. (Sec. 18).

2. The petitioner must file a copy of the petition on the executive secretary or any board member within 15 days after the filing of original petition. (Sec. 18).

3. The board shall be named as a party defendant to such petition. (Sec. 18).

4. The filing shall operate to suspend the requirement, rule, regulation or order until the validity, thereof, has been finally adjudicated. (Sec. 18).

5. The judge shall hear the proceeding de novo. (Sec. 18).

B. The Commonwealth or any aggrieved party has the right to appeal to the Supreme Court of Appeals. (Sec. 19).

The Attorney General must represent the board.

VII. PENALTIES

A. Any owner failing to comply with any provision of this act, or with any order of the board or a court, shall be liable to a fine of not less than $50 nor more than $500 for each violation. (Sec. 20)

B. Each day of continued violation after conviction shall constitute a separate offense and may subject the business or establishment causing pollution to abatement as a nuisance. (Sec. 20).

VIII. CONSTRUCTION

A. Until the authority of any local governing body is superseded existing ordinances shall continue in force except when in conflict with a rule or regulation of the board in which case the rule of the board shall govern.

B. The governing body of any locality shall first obtain the approval of the state board as to the acceptable provisions of a proposed ordinance or amendment.

C. The provisions of this act do not apply to employer-employee relations. (Sec. 9 (g))

IX. EFFECTIVE DATE

Approved April 4, 1966

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Virgin Islands [1]

The Department of Health is required to conduct a program in environmental sanitation, to exercise general control over the enforcement of laws and regulations relating to the health of the people of the Virgin Islands, to maintain public health standards which it deems necessary, to prolong the life span of the people, and to recommend rules and regulations governing preventive programs (§ 3:418).

A public nuisance is defined as anything which is injurious to health, indecent, offensive to the senses or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by a considerable number of persons. Maintaining a public nuisance or failure to remove such when legally required to do so is punishable by a fine not exceeding $200, or imprisonment for not more than one year, or both (§§ 14:1461 and 1462).

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[1] Citations refer to Virgin Islands Code Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Washington 1/

1. Air Pollution Control Act of 1957

I. GENERAL STATEMENT

A. The Washington Air Pollution Control Act of 1957 states that "it is necessary to the health, safety, and welfare of the people of the State to provide means for control and prevention of air pollution" and declares the public policy of the State "to maintain the highest practical standards of purity of the air in order to promote public enjoyment of the State's natural scenic and outdoor recreational resources, to foster and develop public health, and to facilitate the growth of desirable natural and agricultural plant and animal life, all consistent with maximum enjoyment and full industrial development of the State" (§ 70.94.010).

The Act recognizes that problems of air pollution control and prevention are regional in nature and declares it the purpose of the chapter to "provide for creation of separate districts to control and prevent air pollution in each area where it may exist or is likely to occur" (§ 70.94.020).

B. "Air pollution" is defined as "the presence in the outdoor atmosphere of substances put there by man in concentration sufficient to cause an unreasonable interference with the comfort, safety, or health of man; or the reasonable use and enjoyment of his property" (§ 70.94.030).

C. The Act provides that, except where specified in a variance permit, it is unlawful for any person knowingly to cause or permit to be caused air pollution in violation of its provisions or of provisions of any ordinance, resolution, rule or regulation validly promulgated thereunder (§ 70.94.040).

D. SUMMARY OF PROVISIONS

Chapter 70.94, the Air Pollution Control District Act, gives cities, towns, counties or specially-created "air pollution control districts" considerable power in preventing or controlling air pollution.

1/ Citations refer to Revised Code of Washington Annotated.

In controlling air pollution a city, town or county may take unilateral action or may join with any other city, town or county to form a district for the control of air pollution. The district when formed is deemed a political corporate body. It is given the usual powers of a municipal corporation and, if authorized by popular vote, may levy district taxes against real and personal property in the district.

The city, town, county or district, for the purpose of controlling and preventing air pollution, may consult with other bodies and political subdivisions, conduct studies and research relating to air pollution, and receive moneys from any source for the study, dissemination of educational information and control and prevention of air pollution. The political body may pass ordinances, resolutions or rules and regulations pertaining to the control or prevention of air pollution. These enactments shall have the effect of a statute of the State within the district. A violation of such an enactment may be enjoined in a civil action brought by the prosecuting attorney of the county in which the violation occurred.

II. ADMINISTRATIVE ORGANIZATION

A. CONDITIONS PRECEDENT TO OBTAINING JURISDICTION

1. Cities, towns and counties

After tests and surveys, in which the director of health may cooperate, to determine the purity of air within its jurisdiction and after a public hearing in accordance with RCW 42.23, held after 10 days' notice, the governing body of a city, town or county may by resolution declare the necessity of controlling air pollution and may then adopt and enforce ordinances or resolutions for such control within its jurisdiction (§ 70.94.050).

2. Districts

An air pollution control district may be formed by the joining together of any cities, towns or counties pursuant to ordinance or resolution adopted after hearing as provided above (§ 70.94.060).

After the Director of Health has made recommendations, including an appropriate geographical division for control, and a recommended control district has not been formed within a reasonable time, the State Board may hold a public hearing to examine the need for such a district. If the State Board finds that one is necessary, it shall specify the geographic area and governmental units therein which should be included, and such units may proceed with the formation of a district by ordinance or resolution without further hearings. Failure of any municipality within the area of the recommended district to take the steps necessary to join the district does not preclude its formation. Unincorporated areas within the district which incorporate after the State Board makes public its findings become component parts of such district when it is formed, subject to district regulations (Ch. 27, Laws 1963, Sec. 3, approved March 11, 1963).

3. Control officer

Any city, town, county or district which has adopted an ordinance for control and prevention of air pollution may appoint a "control officer" who is charged with enforcement of the act and the local air pollution control ordinances and regulations (§ 70. 94.170).

B. AIR POLLUTION CONTROL DISTRICTS

1. Formation

a. The ordinances and resolutions of cities, towns and counties forming a district are to specify the name of the district and participating political bodies; the district's principal place of business; the territory included within it; the period of time for which it is to operate; the effective date when the district is to begin to transact business and exercise its powers, and may specify the method of financing the air pollution control program.

b. The district may begin to exercise its powers from the date of filing with the secretary of state a certified copy of the ordinance or resolution calling for the formation of the district, or from the date specified in such ordinance or resolution, whichever is later (§ 70.94.070).

2. Governing body

a. Membership

(1) The governing body of each district is known as the board of directors and consists of an appointee of the city selection committee of each county and one county commissioner from each county to be designated by the board of county commissioners of each county included in a district (§ 70.94.100).

(a) Each county included within the district is required to have a separate city selection committee, the membership of which consists of the mayor of each city and town within such county which is also included in the district. A majority of the members of the comm[illegible] constitute a quorum (§ 70.94.110, as a[illegible] by Ch. 27, Laws 1963, Sec. 1, approved Ma[illegible] 11, 1963).

(b) The city selection committee of each county which is included within a district is required to meet within one month after the creation of such district to make its initial appointment to the board and thereafter whenever necessary to make succeeding appointments (§ 70.94.120).

(2) In a district formed of a combination of cities or towns only, the board consists of one appointee, of each town or city included in such district (§ 70.94.100).

(3) If the board would consist of an even number, the members agree upon and elect an additional member from the governing body of one of the towns, cities or counties comprising the district or a private citizen residing in the district (§ 70.94.100).

(4) Board members hold office at the pleasure of the appointing body (§ 70.94.100).

b. A majority of the board constitutes a quorum for the transaction of business (§ 70.94.130).

c. The board elects from its members a chairman and other necessary members (§ 70.94.130).

d. Each member of the board receives from the district $25 per day (but not to exceed $1000 per year) for each full day spent in performance of his duties under this Act, plus the actual and necessary expenses incurred by him in such performance (§ 70.94.130).

3. Powers and duties

a. A district is a political corporate body and has all rights, powers and duties thereof (§ 70.94.080).

b. Any city, town, county or district may, for the purposes of controlling and preventing air pollution:

(1) Advise, consult, cooperate and contract with other agencies and educational institutions of the State, political subdivisions, industries, other States, the Federal government, or other affected groups and individuals.

(2) Encourage and conduct studies, investigations and research relating to air pollution, its causes, control and prevention.

(3) Receive monies from any source and use and disburse such funds for the study, dissemination of educational information, and control and prevention of air pollution.

(4) Develop a comprehensive plan and program for the prevention and control of all new and existing sources of air pollution within its jurisdiction (§ 70.94.140).

(5) Through ordinances, resolutions, or rules and regulations adopted after consideration at a public hearing in accordance with RCW 42.32 of which there has been 10 days' notice, specify the particular properties, types, names, or rates of discharge, of solids, liquids or gases, or combinations thereof, and the locations, circumstances, conditions or times that their discharge into the air will cause air pollution or make it likely to occur (§ 70.94.150).

(6) In determining what causes air pollution or will make it likely to occur, the governing body of each such city, town, county or district is required to take into consideration all of the facts and circumstances bearing upon the reasonableness of the activities involved and the regulations proposed to control it, including:

   (a) The character and degree of injury to, or interference with, comfort, safety, health or the reasonable use and enjoyment of property which is caused or threatened to be caused;

   (b) The social and economic value of the activity involved;

   (c) The suitability or unsuitability of such activity to the area in which it is located; and

(d) The practicability, both scientific and economic, of reducing or eliminating the discharge resulting from such activity (§ 70.94.150).

c. The board

(1) Exercises all powers of the district except as otherwise provided (§ 70.94.130).

(2) May appoint an executive secretary, a control officer, and any other personnel, and is required to determine their salaries and pay them, together with any other proper indebtedness, from district funds (§ 70.94.130).

4. Financing

a. At the time of making general tax levies in each year, the board of county commissioners levies taxes required for districts' purposes against the real and personal property in the district in accordance with the equalized valuation thereof for general tax purposes. Such levies are part of the general tax roll and are collected as part of the general taxes against the property in the district. The treasurers of the counties within the district pay into the appropriate district treasury all funds held by them to the credit of the district. The board designates the treasurer of a county within the district to have custody of the district treasury (§ 70.94.080).

b. Upon an affirmative vote of 3/5 of those voting at a general or special election and provided not fewer than 40 per cent of the voters in a city, town, county or district who voted at the last preceding general state election participate, such city, town, county or district may levy a tax on all taxable property in accordance with development of a comprehensive plan and program for the prevention and control of all new and existing sources of air pollution within its jurisdiction in an amount and for a period as may be authorized (§ 70.94.090).

5. Dissolution

A district may be dissolved prior to the term provided in the agreement by the participating cities, towns, and counties upon adoption by the board, after a hearing held upon 10 days' notice, of a resolution to that effect and the approval of the governing body of each city or town and the Board of County Commissioners of each county comprising the district (§ 70.94.260).

III. PROCEDURES

A. A control officer or his duly authorized representative has the power to enter at reasonable times upon any private or public property, except private dwellings housing four families or fewer, to investigate conditions relating to air pollution. The results of such investigation are confidential and may not be disclosed without the written consent of the parties (§ 70.94.200).

B. A person believed by a control officer to be violating any provision of the Act or any valid ordinance, resolution, rule or regulation relating to the control or prevention of air pollution, must be notified by the officer by registered mail (§ 70.94.210).

C. Within 15 days from the receipt of such notice, the person is to file with the control officer a full report stating what steps have been and are being taken to control or prevent the alleged air pollution (§ 70.94.210).

D. The control officer may then submit by registered mail to the person affected an order setting forth the particulars wherein such person is failing to comply with such ordinance, resolution, rule or regulation and sending an order by registered mail to such person to remedy such failure within a stated time (§ 70.94.210).

E. Upon petition filed within 15 days from receipt of such order a hearing must be granted by the governing body of the city, town, country or board to any person aggrieved by the order. Following the hearing the governing body or board enters its order affirming, reversing, or modifying the order of the control officer. If not appealed from the order is final (§ 70.94.220).

F. Appeal may be taken by filing a petition in the superior court of the county in which the violation allegedly occurred within 15 days after the order of the governing body or board. Such order is subject to review and trial de novo as a cause in equity (§ 70.94.220).

G. Unless, after notice and hearing, the superior court determines an emergency exists requiring that the order be in effect during the pendency of the appeal, the order is stayed until final determination of the appeal (§ 70.94.220).

IV. VIOLATIONS AND PENALTIES

Ordinances of cities and towns pertaining to control and prevention of air pollution are enforced in the same manner as other similar ordinances. Violation of resolutions of a county or valid rules and regulations of a district pertaining to air pollution control, not permitted by an existing variance order, may be enjoined in a civil action brought in the name of the State of Washington by the prosecuting attorney of the county in which the violation occurred (§ 70.94.160, as amended by Ch. 27, Laws 1963, approved March 11, 1963).

V. VARIANCES

A. HEARING

The governing body of a city, town or county, or the board of a district, on its own motion may, or upon petition of an interested person shall hold a hearing upon 10 days' notice to the petitioner and the control officer to determine to what extent, if any, and under what conditions a variance from the requirements established by statute or by any ordinance, resolution, rules and regulations, or order of a city or town, county or district is necessary and will be permitted (§ 70.94.180).

B. GRANTING OF VARIANCE

1. If the governing body or board finds that because of conditions beyond control, compliance with requirements established by statute or with the resolutions, rules, and regulations or orders of the governing body or board would result in an arbitrary and unreasonable taking of property, or in the practical closing or elimination of any lawful business, occupation, or activity, in either case without sufficient corresponding benefit or advantage to the public in the control or prevention of air pollution, it is to prescribe other and different requirements applicable to plants and equipment operated by named classes of industries or persons or separate persons (§ 70.94.180).

2. In determining under what conditions and to what extent a variance is necessary and will be permitted, the body or court hearing the petition is to exercise a wide discretion in weighing the equities involved and the advantages and disadvantages to the residents of the area and to any lawful business, occupation or activity involved resulting from requiring compliance with the specified requirements or resulting from granting a variance (§ 70.94.190).

C. REVOCATION OF VARIANCE ORDER

In the event of a change in conditions, resulting in a substantial change in the equities involved and in the advantages and disadvantages existing at the time of granting a variance, the governing body may revoke or modify the order permitting the variance by written order after a public hearing held upon 30 days' notice to the persons or classes affected (§ 70.94.190).

VI. AIR POLLUTION CONTROL ADVISORY COUNCIL

The governing body of any city, town or county appointing a control officer, or the board of any district, is required to appoint an air pollution control advisory council to advise and consult with such body or board, and the control officer in effectuating the purposes of the law (§ 70.94.240).

VII. SCOPE AND CONSTRUCTION

A. The regulations adopted by a district under this chapter supersede all rules and regulations of the component parts of a district relating to control and enforcement of air pollution but they are not to be construed to supersede any local county or city ordinance or resolution or any provision of the statutory or common law pertaining to nuisance, or to affect any aspect of an employer-employee relationship (§ 70.94.230).

B. This act does not apply to fires set or authorized by a public officer or county agricultural agent for certain purposes in pursuance of their official duties (§ 70.94.250).

VIII. SEPARABILITY

Provision is made for separability (§ 70.94.270).

IX. EFFECTIVE DATE

The provisions of this Act became effective at midnight June 13, 1957.

2. State Air Pollution Control Board

I. GENERAL STATEMENT

In 1961 the Washington Air Pollution Control Act of 1957 (see pp. 178-186) was amended to provide for a program of research and cooperative activity to be conducted by the State Director of Health with the approval of the Board. The program is stated to be an "interim" one (Sec. 70.94.350).

II. AIR POLLUTION CONTROL BOARD

A. ORGANIZATION

The air pollution control board is established in the Department of Health. The chairman is the State Director of Health, ex officio. Eight additional members are appointed by the Governor: One public member; one representing the majority of workmen; one from the University of Washington or Washington State University, in turn; two representing Washington cities and county commissioners; one agricultural representative; and two industry representatives.

Members are appointed for four-year staggered terms, and five members constitute a quorum (Sec. 70.94.300).

B. The board is to meet at least once every three months. Members receive only actual expenses while serving (Secs. 70.94.310-320).

III. POWERS AND DUTIES OF DIRECTOR OF HEALTH

A. THE DIRECTOR OF HEALTH, WITH THE APPROVAL OF THE BOARD, IS TO:

1. Conduct research, investigations, tests, and surveys to determine the nature and extent of air pollution, and to relate the proportion of emissions to various sources, such as residences, industry, agriculture, etc.

2. Formulate and recommend ambient air quality standards for pollutants which would constitute either a health hazard, economic damage or nuisance, and to delineate natural air basins where an air pollution problem is indicated.

3. Recommend standards for uniform control based on known, available, and reasonable methods.

4. Take into consideration in all recommendations the character and degree of injury, threatened or potential; the social and economic value of the activity involved; the suitability of the activity to the area; the scientific and economic practicability of corrective measures (Sec. 70.94.330).

B. REPORTS

Quarterly reports issued by the director of health, with the approval of the Board, are to be distributed to the legislative council and interested persons including local governments. Results of special tests and studies may be furnished affected governmental entities with Board approval (Sec. 70.94.340).

C. CONTRACTS

The director of health is authorized to contract for, or otherwise obtain personnel from municipal corporations or private agencies (Sec. 70.94.350).

D. INSPECTIONS

The State Board, the director of health or their agents are authorized to enter on private property in carrying out the Act, but the results of any investigations may not be disclosed without the written consent of affected parties (Sec. 70.94.360).

E. SAVINGS CLAUSE

The Act does not affect authorities granted under the 1957 statute, or the powers of other State agencies under specific provisions of law (Sec. 70.94.380).

F. PENALTIES

The violation of any provision of the 1957 Act as amended by the 1961 Act, or of any rule, regulation or order issued thereunder is declared to be a misdemeanor (Sec. 70.94.500).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

West Virginia [1]

I. GENERAL STATEMENT

A. SUMMARY

In 1961 West Virginia enacted a State-wide air pollution control statute and established an Air Pollution Control Commission to administer the Act. The public policy of the State is declared to be the maintenance of such reasonable degree of purity of the air as is "technically feasible, economically reasonable and necessary for the protection of the normal health, the general welfare and the property of the people of the State" by measures which "shall not unreasonably obstruct the attraction development and expansion of business, industry and commerce within the State." The powers of the Commission are to be exercised solely to effectuate this policy (Sec. 1409 (128)).

The statute makes it unlawful to "cause a statutory air pollution" (see definitions below) (Sec. 1409 (130)). Further, it is State policy to control the air pollution produced by facilities operating under the control of the State government (S. Bills 117, 118, and 119, approved February 28, 1963).

B. DEFINITIONS

"Air pollutants" means "solids, liquids or gases which, if discharged into the air will result in a statutory air pollution."

"Discharge" means "any continuous or regular release, escape or emission of air pollutants into the air."

"Statutory air pollution" is "limited to the discharge into the air by act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be unreasonably and materially injurious to human, animal or plant life or to property" (Sec. 1409 (129)).

II. ADMINISTRATIVE ORGANIZATION--AIR POLLUTION CONTROL COMMISSION

A. COMPOSITION AND ORGANIZATION

The Commission is established as an agency of the State and consists of five members--the State Health Director and Commissioner of Agriculture ex officio, and three members appointed by the Governor, with the advice and consent of the Senate, for four-year terms, two of whom "Shall be truly representative of industries engaged in business" in the State. Members receive no salary but are to be reimbursed for actual and necessary expenses.

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[1] Citations are to West Virginia Code of 1961 Annotated.

The chairman, elected from the members of the Commission, and a secretary, appointed by the Commission, serve for a fiscal year. The Commission is authorized to hire necessary personnel and fix their compensation, to establish rules for the conduct of its proceedings (Sec. 1409 (131)).

B. POWERS AND DUTIES

The Commission is authorized:

1. To develop ways and means to control air pollution.
2. To consult and cooperate with public and private agencies and groups, and to encourage voluntary cooperative action to preserve air purity.
3. To encourage and conduct research and studies.
4. To adopt and promulgate reasonable regulations which may not specify the design of equipment, type of construction or particular method to be used to reduce the discharge of air pollutants.
5. To conduct enforcement activities, and enter orders requiring compliance with the statute and regulations.
6. To enter private or public property to investigate violations, but such investigation may not extend to secret processes or methods.
7. To give public notice of imminent and serious public health hazards resulting from a violation of the statute.
8. To accept and spend money from the Federal government and other sources and to represent the State in negotiating interstate air pollution control compacts.
9. To appoint technical advisory councils for various areas of the State.

The attorney general and his assistants and the county prosecuting attorneys shall provide legal services required by the commission to enforce the provisions of this article, without additional compensation (S. Bills No. 117, 118, and 119, approved February 28, 1963).

Regulations may be adopted only after publication of a 30-day notice of public hearing. The proceedings at the hearing are to be recorded and views may be presented orally or in writing (Sec. 1409 (132)).

III. ENFORCEMENT PROCEDURES

A. ADMINISTRATIVE HEARING

If, upon the basis of its investigation or a complaint, the Commission believes there may be a violation of the law, it may give 30 days' written notice to the violator to show cause why an order should not be entered regulating or controlling the pollution described in the notice.

In its hearing, which must be held by at least two members, designated by the chairman, the commission is to consider all pertinent factors, including a balancing of the interests and equities involved, the availability and practicality of control devices, the physical and economic feasibility of control measures, the nature of the locality affected, and the reasonableness of existing conditions (S. Bills No. 117, 118, and 119, approved February 28, 1963). Upon the basis of evidence at the hearing, the Commission is to enter an order to promote the declared policy of the statute, and fixing a reasonable period to correct the statutory air pollution, if any is found. Within 20 days after service of the order, any person substantially affected thereby may file a written petition to modify or vacate the order. The Commission shall within 20 days file an order confirming, modifying or vacating the original order. An order becomes final and conclusive unless judicial review is sought (See III C) (Sec. 1409 (133)).

B. EMERGENCIES

Whenever the Commission finds that air pollution conditions in any area create an emergency and require immediate action for the protection of the public health, it may, with the approval of the Governor, issue an order to reduce or prevent emissions contributing to such conditions and giving notice of a hearing to be held within 24 hours. Upon the evidence at the hearing, the Commission within 24 hours thereafter shall affirm, modify or set aside the order (Sec. 1409 (137)).

C. JUDICIAL REVIEW

Any person substantially affected by a Commission Order may within

30 days from the service of the Order file a written notice of appeal from such order with the Commission. The Commission shall forward to the appellant within 30 days of the filing a copy of the full transcript of the proceedings, and of all orders, etc., therein and shall also file such documents with the Clerk of the circuit court of the county where the alleged pollution originated. The court is directed to hear the appeal without a jury upon the basis of the transcript and such additional evidence as may be presented by the Commission or any affected person. The court may affirm, modify or set the order aside in whole or in part, and shall fix a reasonable period to correct pollution found to exist. An appeal may be taken from the circuit court order to the Supreme Court of Appeals by any party affected by the order.

An appeal stays the order appealed from pending final determination of the case (Sec. 1409 (134)).

IV. PENALTIES AND INJUNCTIVE RELIEF

A. A violation of a Commission order is punishable by a penalty of not more than $100 a day for each day the violation continues. Suit to enforce the penalty may be brought in a circuit court of the county where the person resides or is engaged in the activity complained of. The amount of the penalty is fixed by the court without a jury.

B. In the absence of reasonable progress toward correction, the Commission may seek an injunction in the appropriate circuit court to restrain violations of a final order (Sec. 1409 (135), (136)).

V. MISCELLANEOUS

A. OTHER AIR POLLUTION CONTROL AUTHORITIES REPEALED

All other statutes or parts of statutes applicable to air pollution control or inconsistent with this Act, including statutes relating to State and local health boards and political subdivisions, are repealed except that municipal air pollution control ordinances adopted prior to the enactment of the statute are continued in effect (Sec. 1409 (138)).

B. EFFECTIVE DATE

1. Rules and regulations become effective one year after effective date of statute (Sec. 1409 (130)).

2. Statute becomes effective June 6, 1961.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Wisconsin [1/]

1. Local Option

Subsection 59.07 (53) of the Wisconsin Statutes Annotated acquired its present form by Chapter 340, Laws of 1957 (approved July 17, 1957), which added a provision on control of radioactive dusts. This subsection authorizes county boards in all counties having a population of 500,000 or more (Milwaukee County is the only county having over 200,000 inhabitants) to:

1. Regulate by ordinance the emission, within their territorial jurisdiction, of smoke, liquids, gases, solids, etc., including radioactive material, from any source;
2. Prescribe the maximum volatile matter content or other constituents of fuels used within the county;
3. Prescribe fees for examination of plans, inspections, tests, issuance of permits and certificates of operation;
4. Prescribe rules and standards in aid of its regulations;
5. Provide for an appeal board and an advisory board and their powers;
6. Prescribe penalties for violation of the ordinances;
7. Provide for suits to enjoin violations of the ordinances; and
8. Provide for a county department of air pollution regulation.

Ordinances enacted pursuant to this subsection supercede and nullify all municipal ordinances then in effect as to all matters included within the county ordinance. While a county ordinance is effective, such municipalities may enact no ordinances as to the subject matter included within such county ordinances. Matters treated in this subsection are declared to be of State-wide concern.

NOTE:

In Red Owl Stores, Inc. vs. Milwaukee County and John E. Brown (No. 294-839), the Circuit Court of Milwaukee County by its decision dated June 28, 1961, held that subsection 59.07 (53) of the Wisconsin statutes

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[1/] Citations in this digest refer to the Wisconsin Statutes Annotated.

violated the State constitutional requirement of uniform county government because it limited the authorities there described relating to air pollution control to counties having a population of 500,000 or more. It also held invalid the Milwaukee ordinance enacted pursuant to the authority of subsection 59.07 (53).

In order to restore to Milwaukee county its right to control air pollution, the Legislature passed Chapter 508, Laws of 1961 (approved September 20, 1961), adding subsection 59.07 (85), which extends to all county boards the authority to control and abate air pollution. This action presumably revalidated 59.07 (53) and the Milwaukee County ordinance.

With the exception of minor differences in wording, 59.07 (85) is identical with 59.07 (53) in all but two respects: County ordinances adopted pursuant to 59.07 (85) do not supercede municipal ordinances, if they are at least equally restrictive, and no reference is made in 59.07 (85) to any "State-wide concern."

2. Tax Benefits for Air Pollution Abatement Equipment

Real and personal property purchased, constructed and installed upon recommendation or order of a city council, a village board or county board pursuant to § 59.07 (53) to control air pollution shall be exempt from local taxation for five years, unless the use of the property creates net income before personal and real property tax for any of these five years (§ 70.11 (21)).

In addition, in lieu of depreciation, the owner may elect an accelerated amortization deduction for such property computed on an estimated life of 60 months (§§ 71.04 (2b), 71.05 (2b)).

Procedures for claiming and establishing these benefits are set forth in the statute.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Wyoming [1]

Cities of the first class have the power to define, declare, abate and remove nuisances and impose penalties on offenders (§ 15-106). The town councils of incorporated towns have the power to declare, prevent, abate and remove nuisances and take such additional measures for the public health as they deem necessary (§ 15-160, sixth).

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[1] Citations in this digest refer to Wyoming Statutes 1957.

APPENDIX

Public Law 88-206 [1]

Approved December 17, 1963.

An Act

To improve, strengthen, and accelerate programs for the prevention and abatement of air pollution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of July 14, 1955, as amended (42 U.S.C. 1857–1857g), is hereby amended to read as follows:

Clean Air Act.
69 Stat. 322;
73 Stat. 646.

TITLE I—AIR POLLUTION PREVENTION AND CONTROL [1]

FINDINGS AND PURPOSES

Sec. 101. (a) The Congress finds—

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

77 STAT. 392.
77 STAT. 393.

(3) that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and

(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.

(b) The purposes of this title are—

(1) to protect the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution control programs.

COOPERATIVE ACTIVITIES AND UNIFORM LAWS

Sec. 102. (a) The Secretary shall encourage cooperative activities by the States and local governments for the prevention and control of air pollution; encourage the enactment of improved and, so far as practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution; and encourage the making of agreements and compacts between States for the prevention and control of air pollution.

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[1] This Act was amended by section 101 of PL 89-272, 10/20/65, to add the heading for Title I, to change the words ''this Act'' wherever they appear in sections 1 through 7 to ''this title'' and to redesignate sections 1 through 7 and references thereto as sections 101 through 107.

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(b) The Secretary shall cooperate with and encourage cooperative activities by all Federal departments and agencies having functions relating to the prevention and control of air pollution, so as to assure the utilization in the Federal air pollution control program of all appropriate and available facilities and resources within the Federal Government.

(c) The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of air pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by Congress.

77 STAT. 393.
77 STAT. 394.

RESEARCH, INVESTIGATIONS, TRAINING, AND OTHER ACTIVITIES

SEC. 103. (a)[1] The Secretary shall establish a national research and development program for the prevention and control of air pollution and as part of such program shall—

(1) conduct, and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and control of air pollution;

(2) encourage, cooperate with, and render technical services and provide financial assistance to air pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals in the conduct of such activities;

(3) conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency with a view to recommending a solution of such problem, if he is requested to do so by such agency or if, in his judgment, such problem may affect any community or communities in a State other than that in which the source of the matter causing or contributing to the pollution is located;

(4) initiate and conduct a program of research directed toward the development of improved, low-cost techniques for extracting sulfur from fuels.

(5) conduct and accelerate research programs (A) relating to the means of controlling hydrocarbon emissions resulting from the evaporation of gasoline in carburetors and fuel tanks, and the means of controlling emissions of oxides of nitrogen and aldehydes from gasoline-powered or diesel-powered vehicles, and to carry out such research the Secretary shall consult with the technical committee established under section 106 of this Act, and for research concerning diesel-powered vehicles he may add to such committee such representatives from the diesel-powered vehicle industry as he deems appropriate; and (B) directed toward the development of improved low-cost techniques designed to reduce emissions of oxides of sulfur produced by the combustion of sulfur-containing fuels."; and

(b) In carrying out the provisions of the preceding subsection the Secretary is authorized to—

(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities;

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[1] Subsection 103(a) amended by section 103 of PL 89-272, 10/20/65, to add a new paragraph (5).

(2) cooperate with other Federal departments and agencies, with air pollution control agencies, with other public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and conduct of such research and other activities;

(3) make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for purposes stated in subsection (a)(1) of this section;

(4) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5);

(5) provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications;

(6) establish and maintain research fellowships, in the Department of Health, Education, and Welfare and at public or nonprofit private educational institutions or research organizations;

(7) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying air quality and other information pertaining to air pollution and the prevention and control thereof; and

(8) develop effective and practical processes, methods, and prototype devices for the prevention or control of air pollution.

(c)(1) In carrying out the provisions of subsection (a) of this section the Secretary shall conduct research on, and survey the results of other scientific studies on, the harmful effects on the health or welfare of persons by the various known air pollution agents (or combinations of agents).

(2) Whenever he determines that there is a particular air pollution agent (or combination of agents), present in the air in certain quantities, producing effects harmful to the health or welfare of persons, the Secretary shall compile and publish criteria reflecting accurately the latest scientific knowledge useful in indicating the kind and extent of such effects which may be expected from the presence of such air pollution agent (or combination of agents) in the air in varying quantities. Any such criteria shall be published for informational purposes and made available to municipal, State, and interstate air pollution control agencies. He shall revise and add to such criteria whenever necessary to reflect accurately developing scientific knowledge.

(3) The Secretary may recommend to such air pollution control agencies and to other appropriate organizations such criteria of air quality as in his judgment may be necessary to protect the public health and welfare.

Construction of facilities, etc.

(d)[1] The Secretary is authorized to construct such facilities and staff and equip them as he determines to be necessary to carry out his functions under this Act.

Potential air pollution problems.

(e)[1] If, in the judgment of the Secretary, an air pollution problem of substantial significance may result from discharge or discharges into the atmosphere, he may call a conference concerning this potential air pollution problem to be held in or near one or more of the places where such discharge or discharges are occurring or will occur. All interested persons shall be given an opportunity to be heard at such conference, either orally or in writing, and shall be permitted to appear in person or by representative in accordance with procedures prescribed by the Secretary. If the Secretary finds, on the

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[1] Subsections 103(d) and (e) added by section 103 of PL 89-272, 10/20/65.

42 USC 1857d.

basis of the evidence presented at such conference, that the discharge or discharges if permitted to take place or continue are likely to cause or contribute to air pollution subject to abatement under section 105(a), he shall send such findings, together with recommendations concerning the measures which he finds reasonable and suitable to prevent such pollution, to the person or persons whose actions will result in the discharge or discharges involved; to air pollution agencies of the State or States and of the municipality or municipalities where such discharge or discharges will originate; and to the interstate air pollution control agency, if any, in the jurisdictional area of which any such municipality is located. Such findings and recommendations shall be advisory only, but shall be admitted, together with the record of the conference, as part of the record of proceedings under subsections (c), (d), and (e) of section 105.

GRANTS FOR SUPPORT OF AIR POLLUTION CONTROL PROGRAMS

Sec. 104. (a) From the sums appropriated annually for the purposes of this Act but not to exceed 20 per centum of any such appropriation, the Secretary is authorized to make grants to air pollution control agencies in an amount up to two-thirds of the cost of developing, establishing, or improving programs for the prevention and control of air pollution: *Provided*, That the Secretary is authorized to make grants to intermunicipal or interstate air pollution control agencies (described in section 302(b)(2) and (4)) in an amount up to three-fourths of the cost of developing, establishing, or improving, regional air pollution programs. As used in this subsection, the term 'regional air pollution control program' means a program for the prevention and control of air pollution in an area that includes the areas of two or more municipalities, whether in the same or different States.

(b) From the sums available under subsection (a) of this section for any fiscal year, the Secretary shall from time to time make grants to air pollution control agencies upon such terms and conditions as the Secretary may find necessary to carry out the purpose of this section. In establishing regulations for the granting of such funds the Secretary shall, so far as practicable, give due consideration to (1) the population, (2) the extent of the actual or potential air pollution problem, and (3) the financial need of the respective agencies. No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for air pollution programs will be less than its expenditures were for such programs during the preceding fiscal year. No grant shall be made under this section until the Secretary has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.

(c) Not more than 12½ per centum of the grant funds available under subsection (a) of this section shall be expended in any one State.

ABATEMENT OF AIR POLLUTION

Sec. 105. (a) The pollution of the air in any State or States which endangers the health or welfare of any persons, shall be subject to abatement as provided in this section.

(b) Consistent with the policy declaration of this title, municipal, State, and interstate action to abate air pollution shall be encouraged and shall not be displaced by Federal enforcement action except as otherwise provided by or pursuant to a court order under subsection (g).

(c)(1)(A) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the

Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Secretary shall, if such request refers to air pollution which is alleged to endanger the health or welfare of persons in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, give formal notification thereof to the air pollution control agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in whose jurisdictional area such municipality is located, and shall call promptly a conference of such agency or agencies and of the air pollution control agencies of the municipalities which may be adversely affected by such pollution, and the air pollution control agency, if any, of each State, or for each area, in which any such municipality is located.

(B) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Secretary shall, if such request refers to alleged air pollution which is endangering the health or welfare of persons only in the State in which the discharge or discharges (causing or contributing to such pollution) originate and if a municipality affected by such air pollution, or the municipality in which such pollution originates, has either made or concurred in such request, give formal notification thereof to the State air pollution control agency, to the air pollution control agencies of the municipality where such discharge or discharges originate and of the municipality or municipalities alleged to be adversely affected thereby, and to any interstate air pollution control agency, whose jurisdictional area includes any such municipality and shall promptly call a conference of such agency or agencies, unless, in the judgment of the Secretary, the effect of such pollution is not of such significance as to warrant exercise of Federal jurisdiction under this section.

(C) The Secretary may, after consultation with State officials of all affected States, also call such a conference whenever, on the basis of reports, surveys, or studies, he has reason to believe that any pollution referred to in subsection (a) is occurring and is endangering the health and welfare of persons in a State other than that in which the discharge or discharges originate. The Secretary shall invite the cooperation of any municipal, State, or interstate air pollution control agencies having jurisdiction in the affected area on any surveys or studies forming the basis of conference action.

(D)[1] Whenever the Secretary, upon receipt of reports, surveys, or studies from any duly constituted international agency, has reason to believe that any pollution referred to in subsection (a) which endangers the health or welfare of persons in a foreign country is occurring, or whenever the Secretary of State requests him to do so with respect to such pollution which the Secretary of State alleges is of such a nature, the Secretary of Health, Education, and Welfare shall give formal notification thereof to the air pollution control agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in the jurisdictional area of which such municipality is located, and shall call promptly a conference of such agency or agencies. The Secretary shall invite the foreign country which may be adversely affected by the pollution to attend and participate in the conference,

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[1] Subparagraph 10 (c)(1)(D) added by section 102(a) of PL 89-272, 10/20/65.

Restriction.

and the representative of such country shall, for the purpose of the conference and any further proceeding resulting from such conference, have all the rights of a State air pollution control agency. This subparagraph shall apply only to a foreign country which the Secretary determines has given the United States essentially the same rights with respect to the prevention or control of air pollution occurring in that country as is given that country by this subparagraph.

(2) The agencies called to attend such conference may bring such persons as they desire to the conference. Not less than three weeks' prior notice of the conference date shall be given to such agencies.

(3) Following this conference, the Secretary shall prepare and forward to all air pollution control agencies attending the conference a summary of conference discussions including (A) occurrence of air pollution subject to abatement under this Act; (B) adequacy of measures taken toward abatement of the pollution; and (C) nature of delays, if any, being encountered in abating the pollution.

(d) If the Secretary believes, upon the conclusion of the conference or thereafter, that effective progress toward abatement of such pollution is not being made and that the health or welfare of any persons is being endangered, he shall recommend to the appropriate State, interstate, or municipal air pollution control agency (or to all such agencies) that the necessary remedial action be taken. The Secretary shall allow at least six months from the date he makes such recommendations for the taking of such recommended action.

(e) (1) If, at the conclusion of the period so allowed, such remedial action or other action which in the judgment of the Secretary is reasonably calculated to secure abatement of such pollution has not been taken, the Secretary shall call a public hearing, to be held in or near one or more of the places where the discharge or discharges causing or contributing to such pollution originated, before a hearing board of five or more persons appointed by the Secretary. Each State in which any discharge causing or contributing to such pollution originates and each State claiming to be adversely affected by such pollution shall be given an opportunity to select one member of such hearing board and each Federal department, agency, or instrumentality having a substantial interest in the subject matter as determined by the Secretary shall be given an opportunity to select one member of such hearing board, and one member shall be a representative of the appropriate interstate air pollution agency if one exists, and not less than a majority of such hearing board shall be persons other than officers or employees of the Department of Health, Education, and Welfare. At least three weeks' prior notice of such hearing shall be given to the State, interstate, and municipal air pollution control agencies called to attend such hearing and to the alleged polluter or polluters.

(2) On the basis of evidence presented at such hearing, the hearing board shall make findings as to whether pollution referred to in subsection (a) is occurring and whether effective progress toward abatement thereof is being made. If the hearing board finds such pollution is occurring and effective progress toward abatement thereof is not being made it shall make recommendations to the Secretary concerning the measures, if any, which it finds to be reasonable and suitable to secure abatement of such pollution.

(3) The Secretary shall send such findings and recommendations to the person or persons discharging any matter causing or contributing to such pollution; to air pollution control agencies of the State or States and of the municipality or municipalities where such discharge or discharges originate; and to any interstate air pollution control agency whose jurisdictional area includes any such municipality, together with a notice specifying a reasonable time (not less than six months) to secure abatement of such pollution.

(f) If action reasonably calculated to secure abatement of the pollution within the time specified in the notice following the public hearing is not taken, the Secretary—

(1)[1] in the case of pollution of air which is endangering the health or welfare of persons (A) in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, or (B) in a foreign country which has participated in a conference called under subparagraph (D) of subsection (c) of this section and in all proceedings under this section resulting from such conference, may request the Attorney General to bring a suit on behalf of the United States to secure abatement of the pollution,

Ante, p. 995.

(2) in the case of pollution of air which is endangering the health or welfare of persons only in the State in which the discharge or discharges (causing or contributing to such pollution) originate, at the request of the Governor of such State, shall provide such technical and other assistance as in his judgment is necessary to assist the State in judicial proceedings to secure abatement of the pollution under State or local law or, at the request of the Governor of such State, shall request the Attorney General to bring suit on behalf of the United States to secure abatement of the pollution.

(g) The court shall receive in evidence in any suit brought in a United States court under subsection (f) of this section a transcript of the proceedings before the board and a copy of the board's recommendations and shall receive such further evidence as the court in its discretion deems proper. The court, giving due consideration to the practicability of complying with such standards as may be applicable and to the physical and economic feasibility of securing abatement of any pollution proved, shall have jurisdiction to enter such judgment, and orders enforcing such judgment, as the public interest and the equities of the case may require.

(h) Members of any hearing board appointed pursuant to subsection (e) who are not regular full-time officers or employees of the United States shall, while participating in the hearing conducted by such board or otherwise engaged on the work of such board, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding $50 per diem, including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 73b–2) for persons in the Government service employed intermittently.

(i)(1) In connection with any conference called under this section, the Secretary is authorized to require any person whose activities result in the emission of air pollutants causing or contributing to air pollution to file with him, in such form as he may prescribe, a report, based on existing data, furnishing to the Secretary such information as may reasonably be required as to the character, kind, and quantity of pollutants discharged and the use of devices or other means to prevent or reduce the emission of pollutants by the person filing such a report. After a conference has been held with respect to any such pollution the Secretary shall require such reports from the person whose activities result in such pollution only to the extent recommended by such conference. Such report shall be made under oath or otherwise, as the Secretary may prescribe, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe, unless additional time be granted by the Secretary. No person shall be required in such report to divulge trade secrets or secret processes and all information reported shall be considered confidential for the purposes of section 1905 of title 18 of the United States Code.

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[1] Paragraph 105(f)(1) amended by section 102(a) of PL 89-272, 10/20/65.

(2) If any person required to file any report under this subsection shall fail to do so within the time fixed by the Secretary for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where such person has his principal office or in any district in which he does business: *Provided*, That the Secretary may upon application therefor remit or mitigate any forfeiture provided for under this subsection and he shall have authority to determine the facts upon all such applications.

(3) It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of such forfeitures.

AUTOMOTIVE VEHICLE AND FUEL POLLUTION

SEC. 106. (a) The Secretary shall encourage the continued efforts on the part of the automotive and fuel industries to develop devices and fuels to prevent pollutants from being discharged from the exhaust of automotive vehicles, and to this end shall maintain liaison with automotive vehicle, exhaust control device, and fuel manufacturers. For this purpose, he shall appoint a technical committee, whose membership shall consist of an equal number of representatives of the Department and of automotive vehicle, exhaust control device, and fuel manufacturers. The committee shall meet from time to time at the call of the Secretary to evaluate progress in the development of such devices and fuels and to develop and recommend research programs which could lead to the development of such devices and fuels.

(b) One year after enactment of this section, and semi-annually thereafter, the Secretary shall report to the Congress on measures taken toward the resolution of the vehicle exhaust pollution problem and efforts to improve fuels including (A) occurrence of pollution as a result of discharge of pollutants from automotive exhaust; (B) progress of research into development of devices and fuels to reduce pollution from exhaust of automotive vehicles; (C) criteria on degree of pollutant matter discharged from automotive exhausts; (D) efforts to improve fuels so as to reduce emission of exhaust pollutants; and (E) his recommendations for additional legislation, if necessary, to regulate the discharge of pollutants from automotive exhausts.

COOPERATION BY FEDERAL AGENCIES TO CONTROL AIR POLLUTION FROM FEDERAL FACILITIES

SEC. 107. (a) It is hereby declared to be the intent of Congress that any Federal department or agency having jurisdiction over any building, installation, or other property shall, to the extent practicable and consistent with the interests of the United States and within any available appropriations, cooperate with the Department of Health, Education, and Welfare and with any air pollution control agency in preventing and controlling the pollution of the air in any area insofar as the discharge of any matter from or by such building, installation, or other property may cause or contribute to pollution of the air in such area.

(b) In order to control air pollution which may endanger the health or welfare of any persons, the Secretary may establish classes of potential pollution sources for which any Federal department or agency having jurisdiction over any building, installation, or other property shall, before discharging any matter into the air of the United States, obtain a permit from the Secretary for such discharge, such permits to be issued for a specified period of time to be determined by the Secretary and subject to revocation if the Secretary finds pollution is endangering the health and welfare of any persons. In connection with the issuance of such permits, there shall be submitted to the Secretary such plans, specifications, and other information as he deems relevant thereto and under such conditions as he may prescribe. The Secretary shall report each January to the Congress the status of such permits and compliance therewith.

TITLE II—CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES[1]

SHORT TITLE

SEC. 201. This title may be cited as the 'Motor Vehicle Air Pollution Control Act'.

Motor Vehicle Air Pollution Control Act.

"ESTABLISHMENT OF STANDARDS

SEC. 202. (a) The Secretary shall by regulation, giving appropriate consideration to technological feasibility and economic costs, prescribe as soon as practicable standards, applicable to the emission of any kind of substance, from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause or contribute to, or are likely to cause or to contribute to, air pollution which endangers the health or welfare of any persons, and such standards shall apply to such vehicles or engines whether they are designed as complete systems or incorporate other devices to prevent or control such pollution.

79 STAT. 992

79 STAT. 993

(b) Any regulations initially prescribed under this section, and amendments thereto, with respect to any class of new motor vehicles or new motor vehicle engines shall become effective on the effective date specified in the order promulgating such regulations which date shall be determined by the Secretary after consideration of the period reasonably necessary for industry compliance.

Effective date.

PROHIBITED ACTS

SEC. 203. (a) The following acts and the causing thereof are prohibited—

(1) in the case of a manufacturer of new motor vehicles or new motor vehicle engines for distribution in commerce, the manufacture for sale, the sale, or the offering for sale, or the introduction or delivery for introduction into commerce, or the importation into the United States for sale or resale, of any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations under this title which are applicable to such vehicle or engine unless it is in conformity with regulations prescribed under section 202 (except as provided in subsection (b));

(2) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information, required under section 207; or

"(3) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title prior to its sale and delivery to the ultimate purchaser.

(b)(1) The Secretary may exempt any new motor vehicle or new motor vehicle engine, or class thereof, from subsection (a), upon such terms and conditions as he may find necessary to protect the public health or welfare, for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security.

(2) A new motor vehicle or new motor vehicle engine offered for importation by a manufacturer in violation of subsection (a) shall be refused admission into the United States, but the Secretary of the Treasury and the Secretary of Health, Education, and Welfare may, by joint regulation, provide for deferring final determination as to admission and authorizing the delivery of such a motor vehicle or engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as

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[1] Title II added by sec. 101 of PL 89-272, 10/20/65.

may appear to them appropriate to insure that any such motor vehicle or engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this title. The Secretary of the Treasury shall, if a motor vehicle or engine is finally refused admission under this paragraph, cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by such Secretary, within ninety days of the date of notice of such refusal or such additional time as may be permitted pursuant to such regulations, except that disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new motor vehicle or new motor vehicle engine that fails to comply with applicable standards of the Secretary of Health, Education, and Welfare under this title.

Exportation of vehicles.

(3) A new motor vehicle or new motor vehicle engine intended solely for export, and so labeled or tagged on the outside of the container and on the vehicle or engine itself, shall not be subject to the provisions of subsection (a).

79 STAT. 993.

79 STAT. 994.

INJUNCTION PROCEEDINGS

SEC. 204. (a) The district courts of the United States shall have jurisdiction to restrain violations of paragraph (1), (2), or (3) of section 203(a).

(b) Actions to restrain such violations shall be brought by and in the name of the United States. In any such action, subpenas for witnesses who are required to attend a district court in any district may run into any other district.

PENALTIES

SEC. 205. Any person who violates paragraph (1), (2), or (3) of section 203(a) shall be subject to a fine of not more than $1,000. Such violation with respect to section 203(a)(1) and 203(a)(3) shall constitute a separate offense with respect to each new motor vehicle or new motor vehicle engine.

CERTIFICATION

SEC. 206. (a) Upon application of the manufacturer, the Secretary shall test, or require to be tested, in such manner as he deems appropriate, any new motor vehicle or new motor vehicle engine submitted by such manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed under section 202 of this title. If such vehicle or engine conforms to such regulations the Secretary shall issue a certificate of conformity, upon such terms, and for such period not less than one year, as he may prescribe.

(b) Any new motor vehicle or any motor vehicle engine sold by such manufacturer which is in all material respects substantially the same construction as the test vehicle or engine for which a certificate has been issued under subsection (a), shall for the purposes of this Act be deemed to be in conformity with the regulations issued under section 202 of this title.

RECORDS AND REPORTS

SEC. 207. (a) Every manufacturer shall establish and maintain such records, make such reports, and provide such information, as the Secretary may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this title and regulations thereunder and shall, upon request of an officer or employee duly designated by the Secretary, permit such officer or employee at reasonable times, to have access to and copy such records.

Confidential information.

(b) All information reported or otherwise obtained by the Secretary or his representative pursuant to subsection (a), which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of such section 1905, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control, from the duly authorized committees of the Congress.

62 Stat. 791.

DEFINITIONS FOR TITLE II

SEC. 208. As used in this title—

(1) The term "manufacturer" means any person engaged in the manufacturing or assembling of new motor vehicles or new motor vehicle engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles or new motor vehicle engines, but shall not include any dealer with respect to new motor vehicles or new motor vehicle engines received by him in commerce.

79 STAT. 994.

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79 STAT. 995.

(2) The term "motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.

(3) The term "new motor vehicle" means a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and the term "new motor vehicle engine" means an engine in a new motor vehicle or a motor vehicle engine the equitable or legal title to which has never been transferred to the ultimate purchaser.

(4) The term "dealer" means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

(5) The term "ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.

(6) The term "commerce" means (A) commerce between any place in any State and any place outside thereof; and (B) commerce wholly within the District of Columbia.

APPROPRIATIONS

SEC. 209. There is hereby authorized to be appropriated to carry out this title II, not to exceed $470,000 for the fiscal year ending June 30, 1966, not to exceed $845,000 for the fiscal year ending June 30, 1967, not to exceed $1,195,000 for the fiscal year ending June 30, 1968, and not to exceed $1,470,000 for the fiscal year ending June 30, 1969.

TITLE III—GENERAL[1/]

ADMINISTRATION

SEC. 301. (a) The Secretary is authorized to prescribe such regulations as are necessary to carry out his functions under this Act. The Secretary may delegate to any officer or employee of the Department of Health, Education, and Welfare such of his powers and duties under this Act, except the making of regulations, as he may deem necessary or expedient.

(b) Upon the request of an air pollution control agency, personnel of the Public Health Service may be detailed to such agency for the purpose of carrying out the provisions of this Act. The provisions of section 214(d) of the Public Health Service Act shall be applicable with respect to any personnel so detailed to the same extent as if such personnel had been detailed under section 214(b) of that Act.

(c) Payments under grants made under this Act may be made in installments, and in advance or by way of reimbursement, as may be determined by the Secretary.

DEFINITIONS

SEC. 302. When used in this Act—

(a) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(b) The term "air pollution control agency" means any of the following:

(1) A single State agency designated by the Governor of that State as the official State air pollution control agency for purposes of this Act;

(2) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution;

(3) A city, county, or other local government health authority, or, in the case of any city, county, or other local government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency; or

(4) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(c) The term "interstate air pollution control agency" means—

(1) an air pollution control agency established by two or more States, or

(2) an air pollution control agency of two or more municipalities located in different States.

(d) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(e) The term "person" includes an individual, corporation, partnership, association, State, municipality, and political subdivision of a State.

(f) The term "municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

(g) All language referring to adverse effects on welfare shall include but not be limited to injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to transportation.

[1/] The heading of Title III was added and sections 8 through 14 and references thereto were redesignated as sections 301 through 307, by section 101 of PL 89-272, 10/20/65.

OTHER AUTHORITY NOT AFFECTED

SEC. 303. (a) Except as provided in subsection (b) of this section, this Act shall not be construed as superseding or limiting the authorities and responsibilities, under any other provision of law, of the Secretary or any other Federal officer, department, or agency.

(b) No appropriation shall be authorized or made under section 301, 311, or 314(c) of the Public Health Service Act for any fiscal year after the fiscal year ending June 30, 1964, for any purpose for which appropriations may be made under authority of this Act.

RECORDS AND AUDIT

SEC. 304. (a) Each recipient of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary of Health, Education, and Welfare and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this Act.

SEPARABILITY

SEC. 305. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

APPROPRIATIONS

SEC. 306.[1] There is hereby authorized to be appropriated to carry out title I not to exceed $25,000,000 for the fiscal year ending June 30, 1965, not to exceed $30,000,000 for the fiscal year ending June 30, 1966, and not to exceed $35,000,000 for the fiscal year ending June 30, 1967.

SHORT TITLE

SEC. 307. This Act may be cited as the "Clean Air Act."

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[1] Section 306 amended by section 101 of PL 89-272, 10/20/65.

Public Law 89-675
89th Congress, S. 3112
October 15, 1966

An Act

To amend the Clean Air Act so as to authorize grants to air pollution control agencies for maintenance of air pollution control programs in addition to present authority for grants to develop, establish, or improve such programs; make the use of appropriations under the Act more flexible by consolidating the appropriation authorizations under the Act and deleting the provision limiting the total of grants for support of air pollution control programs to 20 per centum of the total appropriation for any year; extend the duration of the programs authorized by the Act; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Clean Air Act Amendments of 1966".

Clean Air Act
Amendments of
1966.

CONSOLIDATION OF APPROPRIATION CEILINGS

SEC. 2. (a) Section 306 of the Clean Air Act is amended to read as follows:

77 Stat. 401;
79 Stat. 997.
42 USC 1857l.

"SEC. 306. There are hereby authorized to be appropriated to carry out this Act, $46,000,000 for the fiscal year ending June 30, 1967, $66,000,000 for the fiscal year ending June 30, 1968, and $74,000,000 for the fiscal year ending June 30, 1969."

(b) Section 209 of such Act is hereby repealed.

79 Stat. 995.
42 USC 1857f-8.

AUTHORIZATION OF MAINTENANCE GRANTS FOR AIR POLLUTION CONTROL PROGRAMS AND REMOVAL OF 20 PER CENTUM CEILING

SEC. 3. (a)(1) Subsection (a) of section 104 of the Clean Air Act (42 U.S.C. 1857c(a)) is amended to read as follows:

77 Stat. 395;
79 Stat. 992.

"SEC. 104. (a) The Secretary is authorized to make grants to air pollution control agencies in an amount up to two-thirds of the cost of developing, establishing, or improving, and grants to such agencies in an amount up to one-half of the cost of maintaining, programs for the prevention and control of air pollution: *Provided*, That the Secretary is authorized to make grants to intermunicipal or interstate air pollution control agencies (described in section 302(b) (2) and (4)) in an amount up to three-fourths of the cost of developing, establishing, or improving, and up to three-fifths of the cost of maintaining, regional air pollution control programs. As used in this subsection, the term 'regional air pollution control program' means a program for the prevention and control of air pollution in an area that includes the areas of two or more municipalities, whether in the same or different States."

42 USC 1857h.

(2) Subsection (b) of such section 104 is amended by striking out "under" in the first sentence and inserting in lieu thereof "for the purposes of", and in the next to the last sentence by inserting a comma after the word "funds" and adding "for other than non-recurrent expenditures," and in the same sentence after the word "pollution", the word "control". Such next to the last sentence is further amended by inserting immediately before the period at the end thereof the following: "; and no agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Secretary is satisfied that such grant will be so used as to supplement and, to the extent practicable, increase the level of State, local, and other non-Federal funds that would in the absence of such grant be made available for the maintenance of such program, and will in no event supplant such State, local, and other non-Federal funds".

(b) Subsection (c) of such section 104 is amended to read as follows:

"(c) Not more than 12½ per centum of the total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs in any one State. In the case of a grant for a program in an area crossing State boundaries, the Secretary shall determine the portion of such grant that is chargeable to the percentage limitation under this subsection for each State into which such area extends."

Approved October 15, 1966.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 2170 (Comm. on Interstate & Foreign Commerce)
and No. 2256 (Comm. of Conference).
SENATE REPORT No. 1361 (Comm. on Public Works).
CONGRESSIONAL RECORD, Vol. 112 (1966):
July 11: Considered in Senate.
July 12: Considered and passed Senate.
Oct. 3: Considered and passed House, amended.
Oct. 13: House agreed to conference report.
Oct. 14: Senate agreed to conference report.

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U.S. DEPARTMENT
OF HEALTH,
EDUCATION,
AND
WELFARE

PUBLIC HEALTH SERVICE

DIVISION OF
AIR POLLUTION

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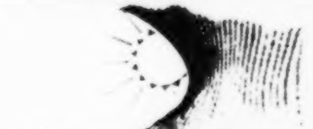

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